

**LEGISLATIVE HISTORY  
TITLES I-XX  
OF THE  
SOCIAL SECURITY ACT**

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**Volume XXI  
98th Congress  
1983-1984**

**Part 2**

LAW  
KF  
3644  
.522  
A14  
L43  
v.21, pt.2





KF3644.522

.A14

L43

v21, pt. 2

**Legislative History of  
Titles I-XX  
of the Social Security Act**

**Volume XXI  
98th Congress  
1983-1984**

**Part 2**

**Compiled by the  
Technical Documents Branch  
Division of Technical Documents and Privacy  
Office of Regulations  
Office of Policy  
Social Security Administration**



# TAX REFORM ACT OF 1984

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## SUPPLEMENTAL REPORT

OF THE

COMMITTEE ON WAYS AND MEANS  
U.S. HOUSE OF REPRESENTATIVES

ON

H.R. 4170

[Including cost estimate of the Congressional Budget Office]



MARCH 5, 1984.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1984



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## TAX REFORM ACT OF 1984

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MARCH 5, 1984.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. ROSTENKOWSKI, from the Committee on Ways and Means,  
submitted the following

### SUPPLEMENTAL REPORT

[To accompany H.R. 4170]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 4170) to provide for tax reform, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as further amended do pass.

The amendment is as follows:

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1           (4) SECTION 751.—The second sentence of sub-  
 2           section (c) of section 751 (defining unrealized receiv-  
 3           ables) is amended—

4                   (A) by striking out “farm recapture property  
 5                   (as defined in section 1251(e)(1)),”, and

6                   (B) by striking out “1251(c),”.

7           (5) SECTION 1252.—The second sentence of sec-  
 8           tion 1252(a)(1) (relating to gains from disposition of  
 9           farm land) is amended by striking out “, except that  
 10          this section shall not apply to the extent section 1251  
 11          applies to such gain”.

12          (c) CLERICAL AMENDMENT.—The table of sections for  
 13          part IV of subchapter P of chapter 1 is amended by striking  
 14          out the item relating to section 1251.

15          (d) EFFECTIVE DATE.—The amendments made by this  
 16          section shall apply to taxable years beginning after December  
 17          31, 1983.

## 18           **TITLE V—TAX TREATMENT OF** 19           **FRINGE BENEFITS**

### 20          SEC. 501. SHORT TITLE; TABLE OF CONTENTS.

21           (a) SHORT TITLE.—This title may be cited as the “Per-  
 22          manent Tax Treatment of Fringe Benefits Act of 1984”.

23           (b) TABLE OF CONTENTS.—

#### TITLE V—TAX TREATMENT OF FRINGE BENEFITS

Sec. 501. Short title; table of contents.

Sec. 502. Exclusion of certain fringe benefits from gross income.

Sec. 503. Exclusion of certain reductions in tuition from gross income.

1 benefit' means any benefit which, with the application of sub-  
 2 section (a), is not includible in the gross income of the em-  
 3 ployee by reason of an express provision of this chapter  
 4 (other than section 117, 124, 127, or 132). Such term in-  
 5 cludes any group term life insurance which is includible in  
 6 gross income only because it exceeds the dollar limitation of  
 7 section 79."

8 (3) TECHNICAL AMENDMENT.—Subsection (c) of  
 9 section 125 is amended by striking out "nontaxable  
 10 benefits" each place it appears and inserting in lieu  
 11 thereof "statutory nontaxable benefits".

12 (c) CONFORMING AMENDMENTS TO EMPLOYMENT  
 13 TAXES.—

14 (1) SOCIAL SECURITY TAXES.—

15 (A) Subsection (a) of section 3121 (defining  
 16 wages) is amended by striking out "or" at the end  
 17 of paragraph (18), by striking out the period at  
 18 the end of paragraph (19) and inserting in lieu  
 19 thereof "; or", and by inserting after paragraph  
 20 (19) the following new paragraph:

21 "(20) any benefit provided to or on behalf of an  
 22 employee if at the time such benefit is provided it is  
 23 reasonable to believe that the employee will be able to  
 24 exclude such benefit from income under section 117 or  
 25 132."



1                   (B) Section 209 of the Social Security Act is  
2                   amended by striking out “or” at the end of sub-  
3                   section (q), by striking out the period at the end of  
4                   subsection (r) and inserting in lieu thereof “; or”,  
5                   and by inserting after subsection (r) the following  
6                   new subsection:

7                   “(s) Any benefit provided to or on behalf of an  
8                   employee if at the time such benefit is provided it is  
9                   reasonable to believe that the employee will be able to  
10                  exclude such benefit from income under section 117 or  
11                  132 of the Internal Revenue Code of 1954.”

12                (2) RAILROAD RETIREMENT TAX.—Subsection (e)  
13                of section 3231 (defining compensation) is amended by  
14                adding at the end thereof the following new paragraph:

15                “(5) The term ‘compensation’ shall not include  
16                any benefit provided to or on behalf of an employee if  
17                at the time such benefit is provided it is reasonable to  
18                believe that the employee will be able to exclude such  
19                benefit from income under section 117 or 132.”

20                (3) UNEMPLOYMENT TAX.—Subsection (b) of sec-  
21                tion 3306 (defining wages) is amended by striking out  
22                “or” at the end of paragraph (13), by striking out the  
23                period at the end of paragraph (14) and inserting in  
24                lieu thereof “; or”, and by inserting after paragraph  
25                (14) the following new paragraph:

1 in section 117(d)(2) of the Internal Revenue Code of 1954)  
 2 for education furnished after June 30, 1984, in taxable years  
 3 ending after such date.

## 4 **TITLE VI—TECHNICAL** 5 **CORRECTIONS**

### 6 **SEC. 601. SHORT TITLE; ETC.**

7 (a) **SHORT TITLE.**—This title may be cited as the  
 8 “Technical Corrections Act of 1984”.

### 9 (b) **TABLE OF CONTENTS.**—

#### **TITLE VI—TECHNICAL CORRECTIONS**

Sec. 601. Short title; etc.

#### **Subtitle A—Amendments Related to the Tax Equity and Fiscal Responsibility Act of 1982**

- Sec. 611. Technical corrections of provisions relating to individuals.
- Sec. 612. Technical corrections of provisions primarily related to businesses.
- Sec. 613. Technical corrections of pension provisions.
- Sec. 614. Miscellaneous provisions.
- Sec. 615. Effective date.

#### **Subtitle B—Amendments Related to Subchapter S Revision Act of 1982; Etc.**

- Sec. 621. Technical corrections of Subchapter S Revision Act of 1982.
- Sec. 622. Miscellaneous provisions.

#### **Subtitle C—Amendments Relating to Highway Revenue Act of 1982**

- Sec. 631. Value of used components furnished by first user not taken into account in determining price.
- Sec. 632. Clarification of application of gasoline excise tax to gasohol, etc.
- Sec. 633. Certain chain operators of retail gasoline stations treated as producers.
- Sec. 634. Other technical amendments.
- Sec. 635. Repeal of certain provisions made obsolete by Highway Revenue Act of 1982.
- Sec. 636. Effective date.

#### **Subtitle D—Amendments to Other Laws**

#### **PART I—CHANGES IN OASDI, PUBLIC ASSISTANCE, AND RELATED PROVISIONS OF THE SOCIAL SECURITY ACT**

- Sec. 641. Changes in title II of the Social Security Act necessitated by the 1983 Amendments.
- Sec. 642. Changes in text of the 1983 Amendments.
- Sec. 643. Other technical corrections in the Social Security Act and related provi-

sions.

Sec. 644. Effective dates.

## PART II—CHANGES IN MEDICARE-RELATED PROVISIONS OF THE SOCIAL SECURITY ACT

Sec. 646. Changes in medicare provisions relating to the 1983 Amendments.

Sec. 647. Enrollment and premium penalty with respect to working aged provision.

Sec. 648. Other technical corrections in medicare-related provisions of the Social Security Act and related Acts.

1           (c) COORDINATION WITH OTHER TITLES.—For pur-  
2 poses of applying the amendments made by any title of this  
3 Act other than this title, the provisions of this title shall be  
4 treated as having been enacted immediately before the provi-  
5 sions of such other titles.

## 6   **Subtitle A—Amendments Related to** 7           **the Tax Equity and Fiscal Respon-** 8           **sibility Act of 1982**

### 9   SEC. 611. TECHNICAL CORRECTIONS OF PROVISIONS RELAT- 10   ING TO INDIVIDUALS.

11           (a) AMENDMENTS RELATED TO SECTION 201.—

12                   (1) DEFINITION OF REGULAR TAX.—Paragraph  
13                   (2) of section 55(f) (defining regular tax) is amended by  
14                   striking out “sections 72(m)(5)(B)” and inserting in lieu  
15                   thereof “sections 47(a), 72(m)(5)(B)”.

16                   (2) SPECIAL ELECTION FOR INTANGIBLE DRILL-  
17                   ING AND DEVELOPMENT COSTS LIMITED TO WELLS  
18                   LOCATED IN THE UNITED STATES.—Subparagraph (A)  
19                   of section 58(i)(4) (relating to special election for intan-  
20                   gible drilling and development cost not allocable to in-  
21                   terest as limited partner) is amended by inserting





1       ing in lieu thereof “retirement age (as defined in sec-  
2       tion 216(l))”; and

3               (C) by striking out “to which” in the matter fol-  
4       lowing clause (ii) and inserting in lieu thereof “in  
5       which”.

6       (2) Section 202(c)(5)(A) of such Act (as added by section  
7       301(a)(5) of the 1983 Amendments) is amended by striking  
8       out “classes (i) and (ii)” and inserting in lieu thereof “clauses  
9       (i) and (ii)”.

10       (c)(1) Section 202(e)(2)(A) of such Act (as amended by  
11       section 133(a)(1)(B) of the 1983 Amendments) is amended by  
12       striking out all that follows “subsection (q),” and precedes  
13       “subparagraph (D) of this paragraph” and inserting in lieu  
14       thereof “paragraph (7) of this subsection, and”.

15       (2) Section 202(e)(2)(C) of such Act (as designated and  
16       amended by section 133(a)(1)(B) of the 1983 Amendments) is  
17       amended—

18               (A) by striking out the period immediately after  
19       “deceased individual”; and

20               (B) by inserting a closing parenthesis after “para-  
21       graph (3) of such subsection (w)”.

22       (3) Paragraph (7) of section 202(e) of such Act (as re-  
23       designated by section 131(a)(3)(A) of the 1983 Amendments)  
24       is amended by striking out “paragraph (2)(B),” and inserting  
25       in lieu thereof “paragraph (2)(D),”.

1 (d)(1) Section 202(f)(1)(C)(ii) of such Act (as added by  
2 section 306(g) of the 1983 Amendments) is amended by strik-  
3 ing out all that follows “attained” and precedes “, and” and  
4 inserting in lieu thereof “retirement age (as defined in section  
5 216(l))”.

6 (2) Section 202(f)(2)(A) of such Act is amended by strik-  
7 ing out “paragraph (3)(B),” and inserting in lieu thereof  
8 “paragraph (3)(D),”.

9 (3) Section 202(f)(3)(C) of such Act (as designated and  
10 amended by section 133(b)(1)(B) of the 1983 Amendments) is  
11 amended by striking out the period immediately after “de-  
12 ceased individual”.

13 (e) Section 202(q)(9)(B)(i) of such Act (as amended by  
14 section 201(b)(1) of the 1983 Amendments) is amended by  
15 striking out “section 216(a)” and inserting in lieu thereof  
16 “section 216(l)”.

17 (f) Section 202(x) of such Act (as added by section  
18 339(a) of the 1983 Amendments) is amended by adding at  
19 the beginning thereof the following heading:

20 “Limitation on Payments to Prisoners”.

21 (g)(1) Section 203(d) of such Act (as amended by sec-  
22 tions 132(b)(2) and 309(h) of the 1983 Amendments) is  
23 amended—

24 (A) by striking out “on seven or more different  
25 calendar days of which he engaged” in paragraph

1 (1)(A) and inserting in lieu thereof “for more than  
2 forty-five hours of which such individual engaged”; and

3 (B) by striking out “on seven or more different  
4 calendar days” in paragraph (2) and inserting in lieu  
5 thereof “for more than forty-five hours”.

(2) The amendments made by paragraph (1) shall apply only with respect to months beginning with the second month after the month in which this Act is enacted.

9 (h) Section 205(r) of such Act (as added by section 336  
10 of the 1983 Amendments) is amended—

11 (1) by striking out “(r)(3)(A) and (r)(3)(B)” in  
12 paragraph (4) and inserting in lieu thereof “subpara-  
13 graphs (A) and (B) of paragraph (3)”;

14 (2) by striking out “the Act” in paragraph (7) and  
15 inserting in lieu thereof “this Act”; and

16           (3) by striking out the heading and inserting in  
17       lieu thereof the following:

18           “Use of Death Certificates to Correct Program  
19                         Information”.

(i)(1) Section 209(e) of such Act (as amended by section 324(c)(2) of the 1983 Amendments) is amended by striking out the semicolon after “Act of 1974”.

(2) Section 209 of such Act is further amended by striking out “section 414(h)(2) of such Code” in the material added by section 324(c)(1) of the 1983 Amendments and in-

1   serting in lieu thereof “section 414(h)(2) of such Code where  
2   the pickup referred to in such section is pursuant to a salary  
3   reduction agreement (whether evidenced by a written instru-  
4   ment or otherwise)”.

5       (j)(1) Section 210(a) of such Act (as amended by sections  
6   321(b) and 322(a)(1)(B) of the 1983 Amendments), in the  
7   matter preceding paragraph (1), is amended by striking out  
8   the matter which follows “such affiliate” and precedes “or  
9   (C)” and the matter which follows “section 233” and pre-  
10   cedes “except”, and by inserting in lieu thereof a comma and  
11   a semicolon, respectively.

12       (2) Section 210(a)(5)(B) of such Act (as amended by sec-  
13   tion 101(a)(1) of the 1983 Amendments) is amended to read  
14   as follows:

15           “(B) is performed by an individual who—

16               “(i) has been continuously performing service  
17           described in subparagraph (A) since December 31,  
18           1983, and for purposes of this clause—

19               “(I) if an individual performing service  
20           described in subparagraph (A) returns to the  
21           performance of such service after being sepa-  
22           rated therefrom for a period of less than 366  
23           consecutive days, regardless of whether the  
24           period began before, on, or after December



1           31, 1983, then such service shall be consid-  
2           ered continuous.

3           “(II) if an individual performing service  
4           described in subparagraph (A) returns to the  
5           performance of such service after being de-  
6           tailed or transferred to an international orga-  
7           nization as described under section 3343 of  
8           subchapter III of chapter 33 of title 5,  
9           United States Code, or under section 3581  
10          of chapter 35 of such title, then the service  
11          performed for that organization shall be con-  
12          sidered service described in subparagraph  
13          (A),

14          “(III) if an individual performing serv-  
15          ice described in subparagraph (A) is reem-  
16          ployed or reinstated after being separated  
17          from such service for the purpose of accept-  
18          ing employment with the American Institute  
19          of Taiwan as provided under section 3310 of  
20          chapter 48 of title 22, United States Code,  
21          then the service performed for that Institute  
22          shall be considered service described in sub-  
23          paragraph (A), and

24          “(IV) if an individual performing service  
25          described in subparagraph (A) returns to the

performance of such service after performing service as a member of a uniformed service (including, for purposes of this clause, service in the National Guard and temporary service in the Coast Guard Reserve) and after exercising restoration or reemployment rights as provided under chapter 43 of title 38, United States Code, then the service so performed as a member of a uniformed service shall be considered service described in subparagraph (A); or

“(ii) is receiving an annuity from the Civil Service Retirement and Disability Fund, or benefits (for service as an employee) under another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services);”.

(3) Section 210(a)(5)(v) of such Act (as so amended) is amended to read as follows:

“(v) any other service in the legislative branch of the Federal Government if such service—

“(I) is performed by an individual who was not subject to subchapter III of chapter

1                   83 of title 5, United States Code, or to an-  
2                   other retirement system established by a law  
3                   of the United States for employees of the  
4                   Federal Government (other than for members  
5                   of the uniformed services), on December 31,  
6                   1983, or

7                   “(II) is performed by an individual who  
8                   was subject to subchapter III of chapter 83  
9                   of such title 5, or to another retirement  
10                  system established by a law of the United  
11                  States for employees of the Federal Govern-  
12                  ment (other than for members of the uni-  
13                  formed services), on December 31, 1983, but  
14                  who—

15                 “(a) commenced the performance of  
16                 such service in the legislative branch after  
17                 that date, or

18                 “(b) was separated from service in the  
19                 legislative branch after that date and has re-  
20                 turned to the performance of such service,  
21                 unless such individual becomes subject to such  
22                 subchapter III within 45 days after the effective  
23                 date of such commencement or return (or, if later,  
24                 within 45 days after the date of the enactment of  
25                 this subclause), or remains subject to such other



1 retirement system, and unless (in the case of a  
2 separation and return described in subdivision (b))  
3 the period of the separation was less than 366  
4 consecutive days;

5 and for purposes of this clause (v) an individual is  
6 subject to such subchapter III or to any such  
7 other retirement system at any time only if (1)  
8 such individual's pay is subject to deductions, con-  
9 tributions, or similar payments (concurrent with  
10 the service being performed at that time) under  
11 section 8334(a) of such title 5 or the correspond-  
12 ing provision of the law establishing such other  
13 system, or (in a case to which section 8332(k)(1)  
14 of such title applies) such individual is making  
15 payments of amounts equivalent to such deduc-  
16 tions, contributions, or similar payments while on  
17 leave without pay, or (2) such individual is receiv-  
18 ing an annuity from the Civil Service Retirement  
19 and Disability Fund, or is receiving benefits (for  
20 service as an employee) under another retirement  
21 system established by a law of the United States  
22 for employees of the Federal Government (other  
23 than for members of the uniformed services);".

1       (4) The amendments made by paragraphs (2) and (3)  
2 shall be effective with respect to service performed after  
3 December 31, 1984.

4       (k)(1) Section 215(a)(7)(B)(ii)(I) of such Act (as added by  
5 section 113(a) of the 1983 Amendments) is amended by strik-  
6 ing out “who initially become eligible for old-age or disability  
7 insurance ,benefits” and inserting in lieu thereof “who  
8 become eligible (as defined in paragraph (3)(B)) for old-age  
9 insurance benefits (or became eligible as so defined for dis-  
10 ability insurance benefits before attaining age 62)”.

11       (2) Section 215(a)(7)(C)(ii) of such Act (as so added) is  
12 amended by striking out “survivors” and inserting in lieu  
13 thereof “survivor’s”.

14       (3) Section 215(f)(9)(B)(i) of such Act (as added by sec-  
15 tion 113(c) of the 1983 Amendments) is amended by striking  
16 out “as though such primary insurance amount had initially  
17 been computed without regard to subsection (a)(7) or (d)(5)”  
18 and inserting in lieu thereof “as though the recomputed pri-  
19 mary insurance amount were being computed under subsec-  
20 tion (a)(7) or (d)(5)”.

21       (4) Section 215(i)(5)(A) of such Act (as added by section  
22 112(c) of the 1983 Amendments) is amended by adding at the  
23 end thereof the following new sentence: “Any amount so in-  
24 creased that is not a multiple of \$0.10 shall be decreased to  
25 the next lower multiple of \$0.10.”.

1       (5) Section 215(i)(5)(B) of such Act (as so added) is  
2 amended—

3           (A) by striking out clause (iii) and inserting in lieu  
4 thereof the following:

5           “(iii) multiplying such quotient by 100 so as to  
6 yield such applicable additional percentage (which shall  
7 be rounded to the nearest one-tenth of 1 percent),”;

8           (B) by striking out “ending with such subsequent  
9 calendar year” in clauses (iv) and (v) and inserting in  
10 lieu thereof “ending with the year before such subse-  
11 quent calendar year”; and

12          (C) by striking out “initially became eligible for  
13 an old-age or disability insurance benefit” in clause (v)  
14 and inserting in lieu thereof “became eligible (as de-  
15 fined in subsection (a)(3)(B)) for the old-age or disabil-  
16 ity insurance benefit that is being increased under this  
17 subsection”.

18       (l)(1) Section 216(f) of such Act is amended by adding at  
19 the end thereof the following new sentence: “For purposes of  
20 subparagraph (C) of section 202(c)(1), a divorced husband  
21 shall be deemed not to be married throughout the month in  
22 which he becomes divorced.”.

23       (2) Section 216(h)(3)(A)(i) of such Act (as amended by  
24 section 201(c)(1)(D) of the 1983 Amendments (after the ap-  
25 plication of section 642(b)(1) of this Act)) is amended by strik-

1 ing out “(as defined in section 216(l))” and inserting in lieu  
2 thereof “(as defined in subsection (l))”.

3 (3) Section 216(i)(2) of such Act (as amended by section  
4 201(c)(1)(D) of the 1983 Amendments (after the application  
5 of section 642(b)(1) of this Act)) is amended by striking out  
6 “(as defined in section 216(l))” in subparagraphs (B) and (D)  
7 and inserting in lieu thereof “(as defined in subsection (l))”.

8 (m) Subparagraph (B) of section 223(c)(1) of such Act is  
9 amended by moving clause (iii) (as added by section 332(b)(2)  
10 of the 1983 Amendments) two ems to the left, and by moving  
11 the preceding provisions of such subparagraph two ems to the  
12 right, so that the left margin of such subparagraph and its  
13 clauses is indented four ems and is aligned with the margin of  
14 subparagraph (A) of such section.

15 (n) Section 229(b) of such Act (as amended by section  
16 151(b)(1) of the 1983 Amendments) is amended by adding at  
17 the end thereof the following new sentence: “Additional ad-  
18 justments may be made in the amounts so authorized to be  
19 appropriated to the extent that the amounts transferred in  
20 accordance with clauses (i) and (ii) of section 151(b)(3)(B) of  
21 the Social Security Amendments of 1983 with respect to  
22 wages deemed to have been paid in 1983 were in excess of or  
23 were less than the amount which the Secretary, on the basis  
24 of appropriate data, determines should have been so  
25 transferred.”.

## 1 SEC. 642. CHANGES IN TEXT OF THE 1983 AMENDMENTS.

2 (a) Section 101(d) of the Social Security Amendments of  
3 1983 (Public Law 98-21) is amended by striking out “remu-  
4 nation paid” and inserting in lieu thereof “service  
5 performed”.

6 (b) Section 112(f) of such Amendments is amended by  
7 inserting “of such Act” after “section 201(a)”.

8 (c) Section 201(c) of such Amendments is amended—

9 (1) by inserting “the” immediately before “age of  
10 65” in paragraph (1); and

11 (2) by inserting “the” immediately before “age of  
12 sixty-five” in paragraph (3).

13 (d) Section 301(a)(5) of such Amendments is amended  
14 by striking out “Section 202(c)” and inserting in lieu thereof  
15 “Effective with respect to monthly insurance benefits for  
16 months after December 1984 (but only on the basis of appli-  
17 cations filed on or after January 1, 1985), section 202(c)”.

18 (e) Section 305(d)(2) of such Amendments is amended  
19 by inserting “each place it appears” immediately before “in  
20 subsection (c)(4)(C)”.

21 (f)(1) Section 422A(c)(9) of the Internal Revenue Code  
22 of 1954 (relating to special rule when disabled) is amended  
23 by striking out “section 105(d)(4)” and inserting in lieu  
24 thereof “section 37(e)(3)”.

25 (2)(A) Section 324(d)(1) of the Social Security Amend-  
26 ments of 1983 is amended by adding at the end thereof the



1 following new sentence: "For purposes of applying such  
2 amendments to remuneration paid after December 31, 1983,  
3 which would have been taken into account before January 1,  
4 1984, if such amendments had applied to periods before Jan-  
5 uary 1, 1984, such remuneration shall be taken into account  
6 when paid (or, at the election of the payor, at the time which  
7 would be appropriate if such amendments had applied).".

8 (B) Section 324(d)(2) of such Amendments is amended  
9 by adding at the end thereof the following new sentence:  
10 "For purposes of applying such amendments to remuneration  
11 paid after December 31, 1984, which would have been taken  
12 into account before January 1, 1985, if such amendments  
13 had applied to periods before January 1, 1985, such remu-  
14 nation shall be taken into account when paid (or, at the  
15 election of the payor, at the time which would be appropriate  
16 if such amendments had applied).".

17 (C) Section 324(d)(4) of such Amendments is amended  
18 by adding at the end thereof the following new sentence:  
19 "For purposes of this paragraph, any plan or agreement to  
20 make payments described in paragraph (2), (3), or (13)(A)(iii)  
21 of section 3121(a) of such Code (as in effect on the day before  
22 the date of the enactment of this Act) shall be treated as a  
23 nonqualified deferred compensation plan.".

1 (g) Section 327(d) of such Amendments (relating to codi-  
2 fication of Rowan decision with respect to meals and lodging)  
3 is amended to read as follows:

4 “(d)(1) The amendments made by subsection (a) shall  
5 apply to remuneration paid after December 31, 1983.

6 “(2) The amendments made by subsection (b) and sub-  
7 section (c)(4) shall apply to remuneration (other than amounts  
8 excluded under section 119 of the Internal Revenue Code of  
9 1954) paid after March 4, 1983, and to any such remunera-  
10 tion paid on or before such date which the employer treated  
11 as wages when paid.

12 “(3) The amendments made by paragraphs (1), (2), and  
13 (3) of subsection (c) shall apply to remuneration paid after  
14 December 31, 1984.”.

15 (h)(1) The second sentence of section 338(b)(3) of such  
16 amendments is amended to read as follows: “Each member of  
17 the Panel shall be allowed travel and related expenses which  
18 shall be subject to the same regulations and limitations (inso-  
19 far as they are applicable) as those which the Senate Com-  
20 mittee on Rules and Administration prescribes for application  
21 to travel and related expenses for which payment is author-  
22 ized to be made from the contingent fund of the Senate.”.

23 (2) Section 338(b) of such amendments is further amend-  
24 ed by adding at the end thereof the following new paragraph:

1       “(6) The provisions of section 8344 of title 5, United  
2 States Code, shall not apply to service by an individual as a  
3 member of the Panel.”.

4       (3) The amendments made by this subsection shall take  
5 effect on January 1, 1984.

6       (i) Section 339(b) of such amendments is amended to  
7 read as follows:

8       “(b) Section 223 of such Act is amended by adding at  
9 the end thereof the following new subsection:

10      “ ‘(h) For provisions relating to limitation on payments  
11 to prisoners, see section 202(x).’ ”.

12      (j) Section 111(e) of such Amendments is amended by  
13 inserting “Budget” before “Reconciliation”.

14 **SEC. 643. OTHER TECHNICAL CORRECTIONS IN THE SOCIAL**  
15 **SECURITY ACT AND RELATED PROVISIONS.**

16      (a)(1)(A) The fourth sentence of section 201(d) of the  
17 Social Security Act is amended—

18          (i) by striking out “the Second Liberty Bond Act,  
19 as amended,” and inserting in lieu thereof “chapter 31  
20 of title 31, United States Code,”; and

21          (ii) by striking out “public-debt obligation” and in-  
22 serting in lieu thereof “public-debt obligations”.

23      (B) Section 201(g)(1)(B) of such Act is amended by  
24 striking out “clauses” in the first sentence and inserting in  
25 lieu thereof “clause”.

1       (2)(A)(i) Section 202(d)(1) of such Act, in clause (ii) in  
2 the matter which follows subparagraph (C) and precedes sub-  
3 paragraph (D), is amended by striking out “paragraphs” and  
4 “paragraph” and inserting in lieu thereof “subparagraphs”  
5 and “subparagraph”, respectively.

6       (ii) Section 202(d)(1)(G) of such Act is amended—

7           (I) by striking out the comma after “age of 18”;

8           (II) by striking out “the age of 22,” and inserting  
9 in lieu thereof “the age of 22—”;

10          (III) by striking out “, or, subject to section  
11 223(e), the termination month (and for purposes” and  
12 inserting in lieu thereof the following:

13               “(i) the termination month, subject to section  
14 223(e) (and for purposes”;

15          (IV) by striking out “after the 15 months” and all  
16 that follows down through “such earlier month.” and  
17 inserting in lieu thereof the following:

18               “after the 15 months following such period of trial  
19 work in which he engages or is determined able  
20 to engage in substantial gainful activity),  
21 or (if later) the earlier of—

22               “(ii) the first month during no part of which  
23 he is a full-time elementary or secondary school  
24 student, or

1                   “(iii) the month in which he attains the age  
2                   of 19,  
3                   but only if he was not under a disability (as so defined)  
4                   in such earlier month.”; and

5                   (V) by indenting all of clause (i) (as designated  
6                   and amended by the preceding provisions of this sub-  
7                   paragraph) four ems, so as to align its left margin with  
8                   the margins of clauses (ii) and (iii) (as so designated).

9                   (iii) The second sentence of section 202(d)(7)(A) of such  
10                  Act is amended by striking out “the date of the enactment of  
11                  this paragraph” and inserting in lieu thereof “the effective  
12                  date of this sentence”.

13                (B) Section 202(e)(1) of such Act is amended—

14                   (i) by striking out the first comma after “age 60”  
15                   in the matter following subparagraph (F)(ii); and

16                   (ii) by striking out “he engages” in the last sen-  
17                   tence and inserting in lieu thereof “she engages”.

18                (C) Section 202(f)(1) of such Act is amended by striking  
19                  out the first comma after “age 60” in the matter following  
20                  subparagraph (F)(ii).

21                (D) Section 202(f)(3)(D)(i) of such Act is amended by  
22                  striking out the semicolon after “applicable,”.

23                (E) Section 2202(a)(1)(B) of Public Law 97-35 is  
24                  amended by striking out “as”.



1 (F)(i) Section 202(q)(3)(G) of the Social Security Act is  
2 amended by striking out “as if the period” and inserting in  
3 lieu thereof “if the period”.

4 (ii) Section 202(q)(7)(E) of such Act is amended by strik-  
5 ing out “he attained retirement age” and inserting in lieu  
6 thereof “she or he attained retirement age”.

7 (G) Section 202(t)(4)(E) of such Act is amended—

8 (i) by inserting “of 1937 or 1974” after “Railroad  
9 Retirement Act” where it first appears; and

10 (ii) by inserting before the semicolon at the end  
11 thereof the following: “of 1937 or section 18(2) of the  
12 Railroad Retirement Act of 1974”.

13 (H) Section 202(u)(1)(B) of such Act is amended by  
14 striking out “, 112, or 113”.

15 (3)(A) Section 203(a)(8) of such Act is amended by  
16 adding a period at the end thereof.

17 (B) Section 203(d)(2) of such Act is amended by striking  
18 out “an individual who is entitled” and inserting in lieu  
19 thereof “an individual under the age of seventy who is enti-  
20 tled”.

21 (C) Section 203(f)(5)(B)(ii) of such Act is amended by  
22 striking out “702(a)(9)” and inserting in lieu thereof  
23 “702(a)(8)”.

24 (D) Section 203(f)(8) of such Act is amended by indent-  
25 ing subparagraphs (B) and (C) two additional ems (for a total

1 indentation of four ems) so as to align their left margins with  
2 the margins of subparagraphs (A) and (D).

3 (4)(A) Section 205(c)(5)(D) of such Act is amended by  
4 inserting “of 1937 or 1974” after “Railroad Retirement  
5 Act” each place it appears.

6 (B) Section 205(c)(5)(I) of such Act is amended by in-  
7 serting before the semicolon at the end thereof the following:  
8 “or section 7(b)(7) of the Railroad Retirement Act of 1974”.

9 (C) Section 205(e) of such Act is amended by striking  
10 out “on order” and inserting in lieu thereof “an order”.

11 (D) Section 205(h) of such Act is amended by striking  
12 out “section 24 of the Judicial Code of the United States”  
13 and inserting in lieu thereof “section 1331 or 1346 of title  
14 28, United States Code,”.

15 (E) Section 205(i) of such Act is amended by striking  
16 out all that follows “through” and precedes “and prior” and  
17 inserting in lieu thereof “the Fiscal Service of the Depart-  
18 ment of the Treasury,”.

19 (F) Section 205(p)(1) of such Act is amended by striking  
20 out “section 1420(e) of the Internal Revenue Code” and in-  
21 serting in lieu thereof “section 3122 of the Internal Revenue  
22 Code of 1954”.

23 (5) Section 208 of such Act is amended by indenting  
24 paragraphs (f) through (h) two ems so as to align their left  
25 margins with the margins of paragraphs (a) through (e) (and

1 by appropriately further indenting subdivisions (1), (2), and  
2 (3) of paragraph (g)).

3 (6)(A) Section 209 of such Act is amended—

4 (i) by indenting paragraphs (5) through (9) of sub-  
5 section (a) two ems so as to align their left margins  
6 with the margins of the preceding paragraphs of such  
7 subsection;

8 (ii) by striking out “(p) Remuneration” and insert-  
9 ing in lieu thereof “(p)(1) Remuneration”;

10 (iii) by striking out the period at the end of para-  
11 graph (p)(1) as redesignated by clause (ii) of this sub-  
12 paragraph and inserting in lieu thereof a semicolon;

13 (iv) by striking out “(p) Any contribution” and in-  
14 serting in lieu thereof “(2) Any contribution”; and

15 (v) by indenting subsections (e), (f), and (k)  
16 through (r) two ems so as to align their left margins  
17 with the margins of subsections (a) through (d) and  
18 subsections (g), (h), and (j) (appropriately further in-  
19 denting paragraphs (1) and (2) of subsection (f) and  
20 paragraphs (1) and (2) of subsection (m)).

21 (B) The seventh paragraph from the end of section 209  
22 of such Act (relating to remuneration for service performed  
23 as a member of a uniformed service) is amended by striking  
24 out “section 102(10) of the Servicemen’s and Veterans’ Sur-

1 vivor Benefits Act” and inserting in lieu thereof “chapter 3  
2 and section 1009 of title 37, United States Code”.

3 (7)(A) Section 210(a)(1) of such Act is amended by strik-  
4 ing out “(A)” and all that follows down through “or (B)”.

5 (B) Section 210(a)(7) of such Act is amended by indent-  
6 ing subparagraph (D) two additional ems (for a total indenta-  
7 tion of four ems) so as to align its left margin with the mar-  
8 gins of subparagraphs (A) through (C).

9 (C) Section 210(a)(9) of such Act is amended by striking  
10 out “section 1532 of the Internal Revenue Code” and insert-  
11 ing in lieu thereof “section 3231 of the Internal Revenue  
12 Code of 1954”.

13 (D) Section 210(a)(19) of such Act is amended by strik-  
14 ing out the comma after “; or”.

15 (E) Section 210(l)(2) of such Act is amended—

16 (i) by striking out “section 102 of the Service-  
17 men’s and Veterans’ Survivor Benefits Act” and in-  
18 serting in lieu thereof “paragraph (21) of section 101  
19 of title 38, United States Code”; and

20 (ii) by striking out “such section” and inserting in  
21 lieu thereof “paragraph (22) of such section”.

22 (F) Section 210(l)(3) of such Act is amended by striking  
23 out “such section 102” and inserting in lieu thereof “para-  
24 graph (23) of such section 101”.

25 (G) Section 210(m) of such Act is amended—

(i) by striking out “a reserve component of a uniformed service as defined in section 102(3) of the Servicemen’s and Veterans’ Survivor Benefits Act” in the first sentence and inserting in lieu thereof “a reserve component as defined in section 101(27) of title 38, United States Code”;

(ii) by inserting “, the National Oceanic and Atmospheric Administration Corps,” after “Coast and Geodetic Survey” in the first sentence;

(iii) by striking out “military or naval” each place it appears in paragraph (5) and inserting in lieu thereof “military, naval, or air”; and

(iv) by striking out “Universal Military Training and Service Act” in paragraph (5)(B) and inserting in lieu thereof “Military Selective Service Act”.

(8)(A) Section 211(a) of such Act is amended by striking out “chapter 1 of the Internal Revenue Code”, “such chapter”, and “section 183 of such code” in the matter preceding paragraph (1) and inserting in lieu thereof “subtitle A of the Internal Revenue Code of 1954”, “such subtitle”, and “section 702(a)(8) of such Code”, respectively.

(B) Section 211(a)(3) of such Act is amended—

(i) by striking out “chapter 1 of the Internal Revenue Code” and inserting in lieu thereof “subtitle A of the Internal Revenue Code of 1954”; and



1           (ii) by inserting “or” before “(C)”.

2           (C) Section 211(a)(4) of such Act is amended by striking  
3 out “section 23(s) of such code” and inserting in lieu thereof  
4 “section 172 of the Internal Revenue Code of 1954”.

5           (D) Section 211(a) of such Act is further amended by  
6 striking out “702(a)(9)” in clauses (iii) and (iv) (in the matter  
7 following paragraph (12)) and inserting in lieu thereof in each  
8 instance “702(a)(8)”.

9           (E) Section 211(b)(1) of such Act is amended by indent-  
10 ing subparagraphs (D), (G), (H), and (I) an additional two  
11 ems (for a total indentation of four ems) so as to align their  
12 left margins with the margins of the other subparagraphs of  
13 such section.

14          (F) Section 211(c) of such Act is amended by striking  
15 out “section 23 of the Internal Revenue Code” and inserting  
16 in lieu thereof “section 162 of the Internal Revenue Code of  
17 1954”.

18          (G) Section 211(c)(3) of such Act is amended by striking  
19 out “section 1532 of the Internal Revenue Code” and insert-  
20 ing in lieu thereof “section 3231 of the Internal Revenue  
21 Code of 1954”.

22          (H) Section 211(d) of such Act is amended by striking  
23 out “supplement F of chapter 1 of the Internal Revenue  
24 Code” and inserting in lieu thereof “subchapter K of chapter  
25 1 of the Internal Revenue Code of 1954”.

1 (I) Section 211(e) of such Act is amended by striking out  
2 “chapter 1 of the Internal Revenue Code”, “chapter 1 of  
3 such code”, and “such chapter 1” and inserting in lieu there-  
4 of “subtitle A of the Internal Revenue Code of 1954”, “sub-  
5 title A of such Code”, and “such subtitle A”, respectively.

6 (9)(A) Section 213(a)(1) of such Act is amended by strik-  
7 ing out “means” and inserting in lieu thereof “mean”.

8 (B) Section 213(a)(2)(B)(ii) of such Act is amended by  
9 striking out “equal to \$3,000” and inserting in lieu thereof  
10 “equal \$3,000”.

11 (10)(A) Section 215(a)(1) of such Act is amended—

12 (i) by striking out “of such benefits” in subpara-  
13 graph (B)(i) and inserting in lieu thereof “for such  
14 benefits”;

15 (ii) by striking out “amounts” in subparagraph  
16 (B)(iii) and inserting in lieu thereof “amount”; and

17 (iii) by striking out “scetion 217” in subparagraph  
18 (C)(ii) and inserting in lieu thereof “section 217”.

19 (B) Section 215(a)(4) of such Act is amended by indent-  
20 ing subparagraph (B) two ems so as to align its left margin  
21 with the margin of subparagraph (A) (and by appropriately  
22 further indenting clauses (i) and (ii) of such subparagraph  
23 (B)).

1       (C) Section 215(f)(2)(A) of such Act is amended by strik-  
2 ing out “primary insurance account” and inserting in lieu  
3 thereof “primary insurance amount”.

4       (D) Section 215(h) of such Act is amended—

5           (i) by adding at the beginning thereof the follow-  
6 ing heading:

7       “Service of Certain Public Health Service Officers”;  
8 and

9           (ii) by striking out “Civil Service Commission” in  
10 paragraph (1) and inserting in lieu thereof “Director of  
11 the Office of Personnel Management”.

12       (E) Section 215 of such Act is further amended—

13           (i) by striking out “he” each place it appears in  
14 subsections (a)(2)(B)(i), (a)(3)(B)(i), (a)(4)(A), (b)(2)(A)  
15 (second sentence), (b)(3)(A)(ii)(I), (b)(4), and (f)(2)(D)(ii),  
16 and the first place it appears in subsection (f)(2)(A),  
17 and inserting in lieu thereof “he or she”;

18           (ii) by striking out “his” each place it appears in  
19 subsections (a)(3)(B)(ii), (b)(1)(A), and (b)(2)(B)(ii)(II)  
20 and inserting in lieu thereof “his or her”;

21           (iii) by striking out “him” in subsections (d)(1)(C)  
22 and (e)(1) and inserting in lieu thereof “such individu-  
23 al”; and

(iv) by striking out “he” the second place it appears in subsection (f)(2)(A) and inserting in lieu thereof “the Secretary”.

(11)(A) Section 2203(d)(4) of Public Law 97-35 is amended by inserting after “at the end of paragraph (3)” the following: “(after and below subparagraph (C)(ii))”.

(B) Section 216(i)(2)(F)(ii) of the Social Security Act is amended by striking out “enacted,” in the matter immediately preceding subdivision (I) and inserting in lieu thereof “enacted—”.

(12)(A) Section 217(d) of such Act is amended by indenting paragraphs (1) and (2) two ems.

(B) Section 217(e)(1) of such Act is amended by inserting “, National Oceanic and Atmospheric Administration Corps,” after “Coast and Geodetic Survey” in the last sentence.

(C) Section 217(f)(1) of such Act is amended by striking out “Civil Service Commission” and inserting in lieu thereof “Director of the Office of Personnel Management”.

(13) Section 218(i) of such Act is amended by striking out “subchapter A or E of chapter 9 of the Internal Revenue Code” and inserting in lieu thereof “chapter 21 and subtitle F of the Internal Revenue Code of 1954”.

(14) Section 221(e) of such Act is amended by striking out “Federal Disability Trust Fund is charged” and inserting

1 in lieu thereof “Federal Disability Insurance Trust Fund is  
2 charged”.

3 (15)(A) Subsections (a) and (b)(1) of section 222 of such  
4 Act are amended by striking out “the Vocational Rehabilita-  
5 tion Act” each place it appears and inserting in lieu thereof  
6 “title I of the Rehabilitation Act of 1973”.

7 (B) Section 222(b)(3) of such Act is amended by striking  
8 out “equal” and inserting in lieu thereof “equals”.

9 (C) Section 222(b)(4) of such Act is amended by striking  
10 out “full-time student” and inserting in lieu thereof “full-time  
11 elementary or secondary school student”.

12 (16)(A) Section 223(d)(2)(A) of such Act is amended by  
13 striking out “an individual” and inserting in lieu thereof “An  
14 individual”.

15 (B)(i) Section 223 of such Act is further amended by  
16 striking out “he” each place the term appears (except in sub-  
17 section (c)(1)(B)(iii)) and inserting in lieu thereof—

18 (I) “such individual” in subsections (a)(1) (the  
19 first, second, fourth, sixth, and seventh places it ap-  
20 pears in the first sentence, and in the second, third,  
21 and fourth sentences), (a)(2) (the first, third, and fourth  
22 places it appears in the first sentence, and in the  
23 second sentence), (c)(1)(A) (the first place it appears),  
24 (c)(1)(B)(i), (c)(1)(B)(ii) (the first place it appears),  
25 (c)(2)(B) (the first place it appears), (d)(1)(B), (d)(2)(A)



1 (the second and third places it appears), (e), and  
 2 (g)(2)(A); and

3 (II) “he or she” in subsections (a)(1) (the third  
 4 and fifth places it appears), (a)(2) (the second and fifth  
 5 places it appears), (b), (c)(1)(A) (the second place it ap-  
 6 pears), (c)(1)(B)(ii) (the second place it appears),  
 7 (c)(2)(B) (the second place it appears), (d)(2)(A) (the  
 8 first and fourth places it appears), and (d)(5).

9 (ii) Section 223 of such Act is further amended by strik-  
 10 ing out “his” each place the term appears (except in subsec-  
 11 tion (d)(2)(B)) and inserting in lieu thereof—

12 (I) “such individual’s” in subsections (d)(2)(A) (the  
 13 first place it appears) and (d)(4) (the second place it ap-  
 14 pears); and

15 (II) “his or her” in subsections (a)(1), (a)(2),  
 16 (d)(2)(A) (the second place it appears), (d)(4) (the first  
 17 and third places it appears), (e), and (g)(2).

18 (iii) Section 223 of such Act is further amended by strik-  
 19 ing out “him” each place the term appears and inserting in  
 20 lieu thereof—

21 (I) “such individual” in subsections (d)(2)(A) and  
 22 (d)(4) (the second place it appears); and

23 (II) “him or her” in subsection (d)(4) (the first  
 24 place it appears).

1       (17) Section 226(b) of such Act is amended (in the  
2 matter following paragraph (2)(C)) by striking out “part (A)”  
3 and inserting in lieu thereof “part A”.

4       (18) The last sentence of section 230(c) of such Act is  
5 amended by striking out “(3)(f)(3)” and inserting in lieu  
6 thereof “3(f)(3)”.

7       (b)(1) Section 302(b) of such Act is amended by striking  
8 out all that follows “through” and precedes “and prior” and  
9 inserting in lieu thereof “the Fiscal Service of the Depart-  
10 ment of the Treasury”.

11       (2) Section 303(a)(4) of such Act is amended by striking  
12 out “1606(b)” and inserting in lieu thereof “3305(b)”.

13       (3) Section 303(a)(5) of such Act (as amended by the  
14 1983 Amendments) is amended—

15           (A) by striking out “1606(b)” and inserting in lieu  
16 thereof “3305(b)”;

17           (B) by striking out the punctuation mark immedi-  
18 ately before the last proviso and inserting in lieu there-  
19 of a colon.

20       (4) Section 303(c) of such Act is amended by striking  
21 out “That” in paragraphs (1) and (2) and inserting in lieu  
22 thereof “that”.

23       (5) Section 303(e)(2)(A)(i) of such Act is amended by  
24 striking out “child support obligatons” and inserting in lieu  
25 thereof “child support obligations”.

1       (c)(1)(A) Section 402(a)(9) of such Act is amended by  
2 striking out “use of disclosure” and inserting in lieu thereof  
3 “use or disclosure”.

4       (B) Section 402(a)(14) of such Act is amended by strik-  
5 ing out “(A) provide that” and inserting in lieu thereof “pro-  
6 vide (A) that”.

7       (C) Section 402(a)(19)(F)(i) of such Act is amended by  
8 striking out “or section 408” and inserting in lieu thereof “or  
9 section 472”.

10      (D) Section 402(a)(19)(G) of such Act is amended by  
11 striking out the comma before “that” in clause (iv).

12      (E) Section 402(a) of such Act is further amended—

13           (i) by striking out “must” immediately before the  
14 first of its 36 numbered subdivisions and inserting in  
15 lieu thereof “must—”;

16           (ii) by indenting and aligning such numbered sub-  
17 divisions (without altering any of the numbering, lan-  
18 guage, or punctuation) to the extent necessary to make  
19 each of such subdivisions a numbered paragraph with  
20 its left margin indented two ems (and with any desig-  
21 nated internal subdivisions within such paragraphs (in-  
22 cluding the numbered subdivisions in subparagraphs (A)  
23 and (B) of paragraph (8) and in subparagraph (A) of  
24 paragraph (14) but not including such subparagraphs  
25 themselves, and not including any of the subdivisions in

1 paragraphs (9), (10), (15), (19)(G), (25), (30), (31), (33),  
2 and (36)) being appropriately further indented and  
3 aligned as subparagraphs or clauses);

4 (iii) by striking out “and” after the semicolon at  
5 the end of paragraph (5);

6 (iv) by striking out “clause” each place it appears  
7 in paragraphs (15)(A), (15)(B), and (19)(F) and insert-  
8 in lieu thereof “paragraph”; and

9 (v) by striking out “section 402(a)(7)” in para-  
10 graph (19)(D) and inserting in lieu thereof “paragraph  
11 (7)”.

12 (F) Section 402(c) of such Act is amended by striking  
13 out “clause” each place it appears and inserting in lieu there-  
14 of “paragraph”.

15 (2)(A) Section 403(b)(3) of such Act is amended by strik-  
16 ing out all that follows “through” and precedes “and prior”  
17 and inserting in lieu thereof “the Fiscal Service of the De-  
18 partment of the Treasury”.

19 (B) Clause (ii) in the last sentence of section 403(j) of  
20 such Act is amended by striking out the comma after “excess  
21 payments”.

22 (3)(A) Section 406(b)(2) of such Act is amended by  
23 adding “and” after the semicolon at the end of clause (C), by  
24 striking out clause (D), and by redesignating clause (E) as  
25 clause (D).

1 (B)(i) The last sentence of section 406(b) of such Act,  
 2 and section 402(a)(19)(F)(i) of such Act, are each amended by  
 3 striking out “clauses (A) through (E)” and inserting in lieu  
 4 thereof “clauses (A) through (D)”.

5 (ii) Section 402(a)(26)(B) of such Act is amended by  
 6 striking out “subparagraphs (A) through (E)” and inserting in  
 7 lieu thereof “clauses (A) through (D)”.

8 (4)(A) Section 407(b)(1)(C) of such Act is amended by  
 9 striking out “such father”, and “he” each place it appears,  
 10 and by inserting in lieu thereof in each instance “such  
 11 parent”.

12 (B) Section 407(b)(2)(A) of such Act is amended by  
 13 striking out “thirty days” and inserting in lieu thereof “30  
 14 days”.

15 (5) Section 409(a) of such Act is amended—

16 (A) by striking out “vacanies” in paragraph (1)(B)  
 17 and inserting in lieu thereof “vacancies”; and

18 (B) by striking out “part (C)” in paragraph (3)  
 19 and inserting in lieu thereof “part C”.

20 (6) Section 410 of such Act is amended by striking out  
 21 “Food Stamp Act of 1964” in subsections (a) and (c) and  
 22 inserting in lieu thereof “Food Stamp Act of 1977”.

23 (7)(A) Section 414(b)(5) of such Act in amended by  
 24 striking out “receipients” and inserting in lieu thereof “recip-  
 25 ients”.



1 (B) Section 415(b)(1)(B)(ii) of such Act is amended by  
2 striking out “determinig” and inserting in lieu thereof “deter-  
3 mining”.

4 (8) Section 420(b) of such Act is amended by striking  
5 out the comma immediately after “preceding sentence”.

6 (9) Section 441 of such Act is amended by striking out  
7 “(a)”.

8 (10) Section 444(d) of such Act is amended by striking  
9 out “rereferred” and inserting in lieu thereof “referred”.

10 (11) Section 445(b)(1)(E) of such Act is amended by  
11 striking out “Comprehensive Employment and Training Act  
12 of 1973” and inserting in lieu thereof “Job Training Partner-  
13 ship Act”.

14 (12) The second sentence of section 452(c)(2) of such  
15 Act is amended by striking out “preceding section” and in-  
16 serting in lieu thereof “preceding sentence”.

17 (13) Section 453(b)(2) of such Act is amended by strik-  
18 ing out “, or the United States” and inserting in lieu thereof  
19 “of the United States”.

20 (14) Section 454 of such Act is amended—

21 (A) by striking out “of such parent” in paragraph  
22 (9)(C);

23 (B) by striking out “collection and distribution,”  
24 in clause (A)(ii) of paragraph (16) and inserting in lieu  
25 thereof “collection, and distribution”; and

(C) by indenting paragraph (17) two ems so as to align its left margin with the margins of the preceding paragraphs, and amending such paragraph (as so indented)—

(i) by striking out “to accept” and inserting in lieu thereof “provide that the State will accept”,

(ii) by striking out “ and to impose” and inserting in lieu thereof “will impose”,

(iii) by striking out “to transmit” and inserting in lieu thereof “will transmit”, and

(iv) by striking out “, otherwise to comply” and inserting in lieu thereof “will otherwise comply”.

(15) Section 456 of such Act is amended—

(A) by inserting “(1)” after “SEC. 456. (a)”;

(B) by striking out “(1) The amount” and inserting in lieu thereof “(2) The amount”;

(C) by striking out “(2) Any” and inserting in lieu thereof “(3) Any”; and

(D) by striking out “paragraphs (1)(A) and (B)” and inserting in lieu thereof “subparagraphs (A) and (B) of paragraph (2)”.

1       (16) The heading of section 458 of such Act is amended  
2 by striking out “STATES” and inserting in lieu thereof  
3 “STATES”.

4       (17) Section 462(f)(2) of such Act is amended by striking  
5 out “dependents” and inserting in lieu thereof “depend-  
6 ents’ ”.

7       (18)(A) Section 474(b)(4)(A) of such Act is amended by  
8 striking out “subparagraph (c)” and inserting in lieu thereof  
9 “subparagraph (C)”.

10       (B) Section 474(c)(2) of such Act is amended by striking  
11 out “relvant” and inserting in lieu thereof “relevant”.

12       (C) Section 474(d)(1) of such Act is amended—

13           (i) by striking out “and (c)” the second place it  
14 appears and inserting in lieu thereof “and (C)”; and

15           (ii) by striking out “secretary” and inserting in  
16 lieu thereof “Secretary”.

17       (d)(1) Section 901(c) of such Act is amended by aligning  
18 paragraphs (1) through (4) (including the subparagraphs in  
19 paragraph (3)) flush with the left margin (but with appropri-  
20 ate indentation in the case of the subparagraphs and clauses  
21 in paragraph (1)).

22       (2) Section 901(f) of such Act is amended by moving  
23 paragraph (3) two ems to the left, so that its left margin is in  
24 flush alignment with the margins of the other paragraphs in  
25 such section.

1       (3) Section 904(b) of such Act is amended by striking  
2 out “the Second Liberty Bond Act, as amended,” and insert-  
3 ing in lieu thereof “chapter 31 of title 31, United States  
4 Code,”.

5       (4) Section 908(d) of such Act is amended by striking  
6 out “5703(b)” and inserting in lieu thereof “5703”.

7       (e)(1)(A) Subparagraphs (C) and (D) of section  
8 1101(a)(8) of such Act are amended by indenting them 4 ems  
9 so as to align their left margin with the left margin of subpar-  
10 agraphs (A) and (B) of such section.

11       (B) Paragraph (9) of section 1101(a) of such Act is  
12 amended by indenting it (including subparagraphs (A)  
13 through (D) and clauses (i) and (ii) of subparagraph (C)) 4  
14 additional ems so as to align the left margin at the beginning  
15 of such paragraph with the left margin of paragraph (8)(A) of  
16 such section.

17       (2)(A) Section 1107(a) of such Act is amended by strik-  
18 ing out “, subchapter E of chapter 1 or subchapter A, C, or  
19 E of chapter 9 of the Internal Revenue Code,”.

20       (B) The amendment made by subparagraph (A) shall not  
21 apply to returns filed or representations made on or before  
22 the date of the enactment of this Act.

23       (3) Section 1107(b) of such Act is amended—

24               (A) by striking out “he” each place it appears and  
25 inserting in lieu thereof “he or she”; and

1           (B) by striking out “former wife divorced,” each  
2           place it appears and inserting in lieu thereof “divorced  
3           wife, divorced husband, surviving divorced wife, surviv-  
4           ing divorced husband, surviving divorced mother, sur-  
5           viving divorced father,”.

6           (4) Section 1114(h)(1) of such Act is amended by strik-  
7           ing out “sections 281, 283, and 1914 of title 18 of the  
8           United States Code, and section 190 of the Revised Statutes  
9           (5 U.S.C. 99)” and insert in lieu thereof “sections 203, 205,  
10          and 209 of title 18, United States Code”.

11          (5) Section 1115(a) of such Act is amended by striking  
12          out “VI,” “602,” and “603,”.

13          (6) Section 1116 of such Act is amended—

14                (A) by striking out “VI,” in subsections (a)(1), (b),  
15                and (d);

16                (B) by striking out “604,” in subsection (a)(3);  
17                and

18                (C) by striking out “XVI,” and all that follows  
19                through “part A” in subsection (d) and inserting in lieu  
20                thereof “XVI, or XIX, or part A”.

21          (7) Section 1131(a) of such Act is amended—

22                (A) by striking out the period after “section  
23                204(d) of this Act” in paragraph (2)(B) and inserting in  
24                lieu thereof a comma; and



1           (B) by moving the matter following paragraph  
2       (2)(B) two ems to the left so that it is flush with the  
3       left margin.

4       (f) Title XIII of such Act is repealed.

5       (g)(1) Section 1611(c) of such Act is amended by adding  
6       at the beginning thereof the following heading:

7           “Period for Determination of Benefits”.

8       (2) Section 1611(g) of such Act is amended by striking  
9       out “or individuals” and inserting in lieu thereof “or such  
10      individual”.

11      (3) Section 1612(b)(2) of such Act is amended by indent-  
12      ing subparagraph (B) two ems so as to align its left margin  
13      with the margin of subparagraph (A).

14      (4) Section 1612(b)(9) of such Act is amended by insert-  
15      ing a comma after “child”.

16      (5) The heading of section 1613(c) of such Act is amend-  
17      ed to read as follows:

18      “Disposal of Resources For Less Than Fair Market Value”.

19      (6) Section 1614(a)(3) of such Act is amended by  
20      moving subparagraph (E) two ems to the left, so that its left  
21      margin is in flush alignment with the margins of the other  
22      subparagraphs in such section.

23      (7) Section 1614(d)(1) of such Act is amended by strik-  
24      ing out “man and women” and inserting in lieu thereof “man  
25      and woman”.

1       (8) Section 1615 of such Act is amended by striking out  
2 “the Vocational Rehabilitation Act” in subsections (a), (c),  
3 and (d) and inserting in lieu thereof “title I of the Rehabilita-  
4 tion Act of 1973”.

5       (9) Section 1618 of such Act is amended—

6           (A) by moving subsection (d) two ems to the left,  
7 so that its left margin is in flush alignment with the  
8 margins of the other subsections in such section;

9           (B) by striking out the comma after “levels of its”  
10 in such subsection (d); and

11           (C) by inserting a comma after “1980”, and after  
12 “1976” each place it appears, in such subsection.

13       (10) Section 1621(e) of such Act is amended by striking  
14 out “severably” and inserting in lieu thereof “severally”.

15       (11) Section 1631(b)(1) of such Act is amended by strik-  
16 ing out “equity or” and inserting in lieu thereof “equity  
17 and”.

18       (12) Section 1631(d)(1) of such Act is amended by strik-  
19 ing out “(e), and (f)” and inserting in lieu thereof “and (e)”.

20       (h)(1) Section 2002(b) of such Act is amended by strik-  
21 ing out “section 203 of the Intergovernmental Cooperation  
22 Act of 1968 (42 U.S.C. 4213)” and inserting in lieu thereof  
23 “section 6503 of title 31, United States Code,”.

24       (2) Section 2006(c) of such Act is amended by striking  
25 out “section 202 of the Intergovernmental Cooperation Act

1 of 1968 (42 U.S.C. 4212)” and inserting in lieu thereof “sec-  
2 tion 6503 of title 31, United States Code”.

3 (i)(1) Subsection (f) of section 86 of the Internal Reve-  
4 nue Code of 1954 is amended by redesignating paragraphs  
5 (1), (2), (3), and (4) as paragraphs (2), (3), (4), and (5), respec-  
6 tively, and by inserting before paragraph (2) (as so redesign-  
7 nated) the following new paragraph:

8 “(1) section 37(c)(3)(A) (relating to reduction for  
9 amounts received as pension or annuity),”.

10 (2) Subsection (a) of section 132 of such Code is amend-  
11 ed by striking out paragraphs (6) and (7) and by redesignating  
12 paragraph (8) as paragraph (6).

13 (3) Section 3121(b)(1) of such Code is amended by strik-  
14 ing out “(A)” and all that follows down through “or (B)”.

15 (4)(A) Section 3121(b)(5)(B) of such Code (as amended  
16 by section 101(b)(1) of the 1983 Amendments) is amended to  
17 read as follows:

18 “(B) is performed by an individual who—

19 “(i) has been continuously performing service  
20 described in subparagraph (A) since December 31,  
21 1983, and for purposes of this clause—

22 “(I) if an individual performing service  
23 described in subparagraph (A) returns to the  
24 performance of such service after being sepa-  
25 rated therefrom for a period of less than 366

1 consecutive days, regardless of whether the  
2 period began before, on, or after December  
3 31, 1983, then such service shall be consid-  
4 ered continuous,

5 “(II) if an individual performing service  
6 described in subparagraph (A) returns to the  
7 performance of such service after being de-  
8 tailed or transferred to an international orga-  
9 nization as described under section 3343 of  
10 subchapter III of chapter 33 of title 5,  
11 United States Code, or under section 3581  
12 of chapter 35 of such title, then the service  
13 performed for that organization shall be con-  
14 sidered service described in subparagraph  
15 (A),

16 “(III) if an individual performing serv-  
17 ice described in subparagraph (A) is reem-  
18 ployed or reinstated after being separated  
19 from such service for the purpose of accept-  
20 ing employment with the American Institute  
21 in Taiwan as provided under section 3310 of  
22 chapter 48 of title 22, United States Code,  
23 then the service performed for that Institute  
24 shall be considered service described in sub-  
25 paragraph (A), and

“(IV) if an individual performing service described in subparagraph (A) returns to the performance of such service after performing service as a member of a uniformed service (including, for purposes of this clause, service in the National Guard and temporary service in the Coast Guard Reserve) and after exercising restoration or reemployment rights as provided under chapter 43 of title 38, United States Code, then the service so performed as a member of a uniformed service shall be considered service described in subparagraph (A); or

“(ii) is receiving an annuity from the Civil Service Retirement and Disability Fund, or benefits (for service as an employee) under another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed service);”.

(B) Section 3121(b)(5)(v) of such Code (as so amended) is amended to read as follows:

“(v) any other service in the legislative branch of the Federal Government if such service—



1                   “(I) is performed by an individual  
2                   who was not subject to subchapter III  
3                   of chapter 83 of title 5, United States  
4                   Code, or to another retirement system  
5                   established by a law of the United  
6                   States for employees of the Federal  
7                   Government (other than for members of  
8                   the uniformed services), on December  
9                   31, 1983, or

10                   “(II) is performed by an individual  
11                   who was subject to subchapter III of  
12                   chapter 83 of such title 5, or to another  
13                   retirement system established by a law  
14                   of the United States for employees of  
15                   the Federal Government (other than for  
16                   members of the uniformed services), on  
17                   December 31, 1983, but who—

18                   “(a) commenced the perform-  
19                   ance of such service in the legisla-  
20                   tive branch after that date, or

21                   “(b) was separated from serv-  
22                   ice in the legislative branch after  
23                   that date and has returned to the  
24                   performance of such service,

1                   unless such individual becomes subject  
2                   to such subchapter III within 45 days  
3                   after the effective date of such com-  
4                   mencement or return (or, if later, within  
5                   45 days after the date of the enactment  
6                   of this subclause), or remains subject to  
7                   such other retirement system, and  
8                   unless (in the case of a separation and  
9                   return described in subdivision (b)) the  
10                  period of the separation was less than  
11                  366 consecutive days;

12                 and for purposes of this clause (v) an individ-  
13                 ual is subject to such subchapter III or to  
14                 any such other retirement system at any  
15                 time only if (1) such individual's pay is sub-  
16                 ject to deductions, contributions, or similar  
17                 payments (concurrent with the service being  
18                 performed at that time) under section  
19                 8334(a) of such title 5 or the corresponding  
20                 provision of the law establishing such other  
21                 system, or (in a case to which section  
22                 8332(k)(1) of such title applies) such individ-  
23                 ual is making payments of amounts equiva-  
24                 lent to such deductions, contributions, or  
25                 similar payments while on leave without pay,

1 or (2) such individual is receiving an annuity  
2 from the Civil Service Retirement and Dis-  
3 ability Fund, or is receiving benefits (for  
4 service as an employee) under another retire-  
5 ment system established by a law of the  
6 United States for employees of the Federal  
7 Government (other than for members of the  
8 uniformed services);”.

9 (C) The amendments made by subparagraphs (A) and  
10 (B) shall be effective with respect to service performed after  
11 December 31, 1983.

12 (5) Section 3121(i)(2) of such Code is amended by strik-  
13 ing out “section 102(10) of the Servicemen’s and Veterans’  
14 Survivor Benefits Act” and inserting in lieu thereof “chapter  
15 3 and section 1009 of title 37, United States Code”.

16 (6) Section 3121(m)(2) of such Code is amended—

17 (A) by striking out “section 102 of the Service-  
18 men’s and Veterans’ Survivor Benefits Act” and in-  
19 serting in lieu thereof “paragraph (21) of section 101  
20 of title 38, United States Code”; and

21 (B) by striking out “such section” and inserting in  
22 lieu thereof “paragraph (22) of such section”.

23 (7) Section 3121(m)(3) of such Code is amended by  
24 striking out “such section 102” and inserting in lieu thereof  
25 “paragraph (23) of such section 101”.

1 (8) Section 3121(n) of such Code is amended—

2 (A) by striking out “a reserve component of a uni-  
3 formed service as defined in section 102(3) of the Serv-  
4 icemen’s and Veterans’ Survivor Benefits Act” in the  
5 first sentence and inserting in lieu thereof “a reserve  
6 component as defined in section 101(27) of title 38,  
7 United States Code”;

8 (B) by inserting “, the National Oceanic and At-  
9 mospheric Administration Corps,” after “Coast and  
10 Geodetic Survey” in the first sentence;

11 (C) by striking out “military or naval” each place  
12 it appears in paragraph (5) and inserting in lieu thereof  
13 “military, naval, or air”; and

14 (D) by striking out “Universal Military Training  
15 and Service Act” in paragraph (5)(B) and inserting in  
16 lieu thereof “Military Selective Service Act”.

17 (9) Effective January 1, 1984, subparagraph (B) of sec-  
18 tion 3121(v)(1) of such Code is amended to read as follows:

19 “(B) any amount treated as an employer  
20 contribution under section 414(h)(2) where the  
21 pickup referred to in such section is pursuant to a  
22 salary reduction agreement (whether evidenced by  
23 a written instrument or otherwise).”.

1       (10) Effective January 1, 1985, subparagraph (B) of  
2 section 3306(r)(1) of such Code is amended to read as fol-  
3 lows:

4               “(B) any amount treated as an employer  
5 contribution under section 414(h)(2) where the  
6 pickup referred to in such section is pursuant to a  
7 salary reduction agreement (whether evidenced by  
8 a written instrument or otherwise).”.

9       (11) Section 6334(c) of such Code is amended by insert-  
10 ing “(including section 207 of the Social Security Act)” im-  
11 mediately after “any other law of the United States”.

12       (j)(1) Section 1101(a)(6) of the Social Security Act is  
13 amended by striking out “means” and all that follows and  
14 inserting in lieu thereof “means the Secretary of Health and  
15 Human Services.”.

16       (2) The following provisions of such Act are amended by  
17 striking out “Health, Education, and Welfare” wherever it  
18 appears and inserting in lieu thereof “Health and Human  
19 Services”:

20               (A) In title II—

21                       (i) subsections (a)(3), (a)(4), (b)(1), (b)(2),  
22                       (g)(1), (g)(2), (g)(4), and (i)(1) of section 201;

23                       (ii) subsections (q)(4)(B), (q)(6)(B), and (r)(1)  
24 of section 218; and



1 (iii) subsections (b)(3) and (b)(4) of section  
2 231;

3 (B) in title IV—

4 (i) subsections (b)(2) and (b)(3) of section 403;

5 (ii) subsection (a) of section 431;

6 (iii) subsection (b) of section 436;

7 (iv) section 439;

8 (v) section 441;

9 (vi) section 443;

10 (vii) subsection (a) of section 444;

11 (viii) subsection (a) of section 452;

12 (ix) subsection (b)(1) of section 453;

13 (x) paragraph (8)(B) of section 454; and

14 (xi) section 460;

15 (C) in title VII—

16 (i) section 702; and

17 (ii) subsection (c)(1) of section 706;

18 (D) in title XI—

19 (i) section 1102;

20 (ii) subsection (b) of section 1106;

21 (iii) subsection (b) of section 1107;

22 (iv) subsection (c) of section 1114;

23 (v) section 1120; and

24 (vi) subsection (a) of section 1126;

25 (E) in title XVI, section 1602; and

1 (F) in title XVIII—

2 (i) subsections (a), (f)(1), (g), and (h) of sec-  
3 tion 1817;

4 (ii) subsections (a)(2) and (d)(1) of section  
5 1840;

6 (iii) subsections (f), (g), (h), and (i) of section  
7 1841; and

8 (iv) subsection (b)(3) of section 1842.

9 (3) The following provisions of such Act are amended by  
10 striking out “of Health, Education, and Welfare” wherever it  
11 appears:

12 (A) In title II—

13 (i) subsections (a)(10)(B) and (l)(4)(A) of sec-  
14 tion 210;

15 (ii) subsections (a)(2), (a)(3), (b)(2), (e)(2),  
16 (e)(3), and (f)(1) of section 217;

17 (iii) subsections (a)(1), (c)(4), (d)(3), (d)(7),  
18 (h)(2), (h)(3), (i), (j), (k)(1), (l), and (p)(2) of section  
19 218;

20 (iv) subsection (g) of section 228; and

21 (v) subsection (d) of section 233;

22 (B) in title IV—

23 (i) subsection (a)(3) of section 403; and

24 (ii) subsection (e) of section 407; and

25 (C) in title XIX, section 1901.

1 (4) Section 205(l) of such Act is amended by striking out  
 2 “employee” and all that follows down through “designated”  
 3 and inserting in lieu thereof “employee of the Department of  
 4 Health and Human Services designated”.

5 (5) The following provisions of the Internal Revenue  
 6 Code of 1954 are amended by striking out “Health, Educa-  
 7 tion, and Welfare” each place it appears and inserting in lieu  
 8 thereof “Health and Human Services”:

9 (A) Subsection (d)(6)(B)(ii) of section 51;

10 (B) subsections (c)(1), (c)(2)(E), (g)(1), (g)(3)(A),  
 11 and (g)(3)(B) of section 1402;

12 (C) subsection (b)(10)(B) of section 3121;

13 (D) subsections (d) and (f) of section 6057;

14 (E) subsection (l)(5) of section 6103; and

15 (F) paragraph (5) of section 6511(d).

16 (k) Sections 432(d), 432(f)(1), 433(g), and 434(b) of the  
 17 Social Security Act are each amended by striking out “of  
 18 Labor” wherever it appears.

19 (l) Any reference to the Federal Security Administrator  
 20 which may remain in the provisions of title II, IV, VII, or  
 21 XI of the Social Security Act (other than section 1101(a)(6)  
 22 of such Act) is amended—

23 (1) by substituting “Secretary” or “Secretary’s”  
 24 for the term “Administrator” or “Administrator’s”,  
 25 where the reference is to that term alone;

1           (2) by substituting "Secretary of Health, Educa-  
2           tion, and Welfare" for the term "Federal Security Ad-  
3           ministrator", where the reference is to that term, if the  
4           provision containing such reference is amended by  
5           paragraph (2) or (3) of subsection (j) (in which case the  
6           amendment of such provision under this paragraph  
7           shall be deemed to have taken effect immediately prior  
8           to the amendment of such provision under such para-  
9           graph (2) or (3)); and

10           (3) by substituting "Secretary of Health and  
11           Human Services" for the term "Federal Security Ad-  
12           ministrator" in any other case where the reference is  
13           to that term;

14 but nothing in this subsection shall affect the exercise under  
15 section 402(a)(5) of such Act of the functions, powers, and  
16 duties relating to the prescription of personnel standards on a  
17 merit basis which were transferred from the Secretary of  
18 Health, Education, and Welfare by section 208(a)(3)(D) of  
19 Public Law 91-648.

20 **SEC. 644. EFFECTIVE DATES.**

21           (a) The amendments made by sections 641 and 642  
22 shall be effective as though they had been included in the  
23 enactment of the Social Security Amendments of 1983  
24 (Public Law 98-21).

1 (b) Except to the extent otherwise specifically provided  
2 in this subtitle, the amendments made by section 643 shall be  
3 effective on the date of the enactment of this Act; but none of  
4 such amendments shall be construed as changing or affecting  
5 any right, liability, status, or interpretation which existed  
6 (under the provisions of law involved) before that date.

7 **PART II—CHANGES IN MEDICARE-RELATED**

8 **PROVISIONS OF THE SOCIAL SECURITY ACT**

9 **SEC. 646. CHANGES IN MEDICARE PROVISIONS RELATING TO**

10 **THE 1983 AMENDMENTS.**

11 (a)(1) Section 1866(a)(1)(F) of the Social Security Act is  
12 amended by inserting “a professional standards review orga-  
13 nization (if there is such an organization in existence in the  
14 area in which the hospital is located as of July 1, 1983) or”  
15 before “a utilization and quality control”.

16 (2) The amendment made by paragraph (1) shall take  
17 effect on the sixtieth day following the date of the enactment  
18 of this Act.

19 (b)(1) Section 1886(d)(1) of such Act is amended—

20 (A) by striking out “, or discharges occurring” in  
21 subparagraph (C), and

22 (B) by striking out “cost reporting periods begin-  
23 ning, or” in subparagraph (D).



1       (2) Section 1886(c)(4)(A) of such Act is amended by  
2 striking out “and (D)” and inserting in lieu thereof “(D) and  
3 (E)”.

4       (3) Section 1886(e)(5) of such Act is amended—

5           (A) by striking out “for public comment” in the  
6 matter before subparagraph (A), and

7           (B) by inserting “for public comment” in subpara-  
8 graph (A) after “that fiscal year,”.

9       (4) Section 1866(a)(1)(F) of such Act (as added by sec-  
10 tion 602(f)(1)(C) of the Social Security Amendments of 1983  
11 (in this part referred to as the “1983 Amendments”) is  
12 amended by striking out “(c) or (d)” and inserting in lieu  
13 thereof “(b), (c), or (d)”.

14       (5)(A) The last sentence of section 1878(f)(1) of such  
15 Act is amended by inserting “or which have obtained a hear-  
16 ing under subsection (b)” after “common ownership or con-  
17 trol”.

18       (B) The amendment made by subparagraph (A) shall be  
19 effective with respect to any appeal or action brought on or  
20 after the date of the enactment of this Act.

21       (6) Section 1818(c) of such Act is amended by striking  
22 out “subsection (a) of section 1839” and inserting in lieu  
23 thereof “subsection (b) of section 1839”.

1 (c)(1) Section 1817(a) of the Social Security Act (as  
2 amended by section 141(b) of the 1983 Amendments) is  
3 amended—

4 (A) by striking out “monthly on the first day of  
5 each calendar month” in the next to last sentence and  
6 inserting in lieu thereof “from time to time”,

7 (B) by striking out “to be paid to or deposited  
8 into the Treasury during such month” in such sentence  
9 and inserting in lieu thereof “paid to or deposited into  
10 the Treasury”, and

11 (C) by striking out the last sentence.

12 (2) The amendments made by paragraph (1) shall  
13 become effective on the first day of the month following the  
14 month in which this Act is enacted.

15 (d)(1) Section 602(h)(2) of the Social Security Amend-  
16 ments of 1983 (Public Law 98-21) is amended by adding at  
17 the end the following new subparagraph:

18 “(C) Notwithstanding section 604(a)(1), the amend-  
19 ments made by this paragraph shall be effective with respect  
20 to any appeal or action brought on or after the date of the  
21 enactment of the Tax Reform Act of 1984.”.

22 (2) Section 604(c) of such Amendments is amended by  
23 adding at the end the following new paragraph:

24 “(4) The Secretary shall cause to be published in the  
25 Federal Register proposed regulations to carry out subsection

1 (c) of section 1886 of the Social Security Act (as amended by  
2 this title) no later than May 1, 1984, and allow for a period  
3 of 45 days for public comment thereon. After consideration of  
4 the comments received, the Secretary shall cause to be pub-  
5 lished in the Federal Register final regulations to carry out  
6 such subsection not later than August 1, 1984.”.

7 (e) Except as otherwise specifically provided in this sec-  
8 tion, the amendments made by this section shall be effective  
9 as though they had been included in the enactment of the  
10 Social Security Amendments of 1983 (Public Law 98-21).

11 **SEC. 647. ENROLLMENT AND PREMIUM PENALTY WITH RE-**  
12 **SPECT TO WORKING AGED PROVISION.**

13 (a) The second sentence of section 1839(b) of the Social  
14 Security Act is amended by adding before the period at the  
15 end the following: “, but there shall not be taken into account  
16 months in which the individual has met the conditions speci-  
17 fied in clauses (i) and (iii) of section 1862(b)(3)(A) and can  
18 demonstrate that the individual was enrolled in a group  
19 health plan described in clause (iv) of such section by reason  
20 of the individual’s (or the individual’s spouse’s) current  
21 employment”.

22 (b) Section 1837 of such Act is amended by adding at  
23 the end the following new subsection:

24 “(i)(1) In the case of an individual who—

1           “(A) meets the conditions described in clauses (i)  
2           and (iii) of section 1862(b)(3)(A),

3           “(B) at the time the individual first satisfies para-  
4           graph (1) or (2) of section 1836, is enrolled in a group  
5           health plan described in section 1862(b)(3)(A)(iv) by  
6           reason of the individual’s (or the individual’s spouse’s)  
7           current employment, and

8           “(C) has elected not to enroll (or to be deemed  
9           enrolled) under this section during the individual’s ini-  
10          tial enrollment period,  
11          there shall be a special enrollment period described in para-  
12          graph (3).

13          “(2) In the case of an individual who—

14               “(A) meets the conditions described in clauses (i)  
15               and (iii) of section 1862(b)(3)(A),

16               “(B)(i) has enrolled (or has been deemed to have  
17               enrolled) in the medical insurance program established  
18               under this part during the individual’s initial enrollment  
19               period and any subsequent special enrollment period  
20               under this subsection during which the individual was  
21               not enrolled in a group health plan described in section  
22               1862(b)(3)(A)(iv) by reason of the individual’s (or indi-  
23               vidual’s spouse’s) current employment, and

24               “(C) has not terminated enrollment under this sec-  
25               tion at any time at which the individual is not enrolled

1 in such a group health plan by reason of the individ-  
2 ual's (or individual's spouse's) current employment,  
3 there shall be a special enrollment period described in para-  
4 graph (3).

5 “(3) The special enrollment period referred to in para-  
6 graphs (1) and (2) is the period—

7 “(A) beginning with the first day of the third  
8 month before the month in which the individual attains  
9 the age of 70 and ending seven months later, or

10 “(B) beginning with the first day of the first  
11 month in which the individual is no longer enrolled in a  
12 group health plan described in section 1862(b)(3)(A)(iv)  
13 by reason of current employment and ending seven  
14 months later,

15 whichever period begins earlier.”.

16 (c) Section 1838 of such Act is amended by adding at  
17 the end the following new subsection:

18 “(e) Notwithstanding subsection (a), in the case of an  
19 individual who enrolls during a special enrollment period pur-  
20 suant to—

21 “(1) subparagraph (A) of section 1837(i)(3)—

22 “(A) before the month in which he attains  
23 the age of 70, the coverage period shall begin on  
24 the first day of the month in which he has at-  
25 tained the age of 70, or



1                   “(B) in or after the month in which he at-  
2                   tains the age of 70, the coverage period shall  
3                   begin on the first day of the month following the  
4                   month in which he so enrolls; or

5                   “(2) subparagraph (B) of section 1837(i)(3)—

6                   “(A) in the first month of the special enroll-  
7                   ment period, the coverage period shall begin on  
8                   the first day of such month, or

9                   “(B) in a month after the first month of the  
10                  special enrollment period, the coverage period  
11                  shall begin on the first day of the month following  
12                  the month in which he so enrolls.”.

13               (d)(1) The amendment made by subsection (a) shall  
14               apply to months beginning with January 1983 for premiums  
15               for months beginning with July 1984.

16               (2) The amendments made by subsections (b) and (c)  
17               shall apply to enrollments in months beginning with July  
18               1984, except that in the case of any individual who would  
19               have had a special enrollment period under section 1837(i) of  
20               the Social Security Act that would have begun before July 1,  
21               1984, such period shall be deemed to begin on July 1, 1984.

1 SEC. 648. OTHER TECHNICAL CORRECTIONS IN MEDICARE-RE-  
2 LATED PROVISIONS OF THE SOCIAL SECURITY  
3 ACT AND RELATED ACTS.

4 (a)(1) Section 1122(b) of the Social Security Act is  
5 amended—

6 (A) by striking out the period at the end of para-  
7 graph (1) and inserting in lieu thereof a comma, and

8 (B) by striking out “(or the Mental Retardation  
9 Facilities and Community Mental Health Centers Con-  
10 struction Act of 1963)”.

11 (2) Section 1122(i)(3) of such Act is amended by striking  
12 out “5703(b)” and inserting in lieu thereof “5703”.

13 (3) Section 1128A(g) of such Act is amended by striking  
14 out “Professional Standards Review Organization” and in-  
15 serting in lieu thereof “utilization and quality control peer  
16 review organization”.

17 (4) Section 1129(a) of such Act is amended by striking  
18 out “Sate” and inserting in lieu thereof “State”.

19 (5) The heading of title XI of such Act is amended by  
20 striking out “PROFESSIONAL STANDARDS REVIEW”  
21 and inserting in lieu thereof “PEER REVIEW”.

22 (b)(1) The last sentence of sections 1814(a) of such Act  
23 and the last sentence of section 1835(a) of such Act are each  
24 amended by striking out “contractural” and inserting in lieu  
25 thereof “contractual”.

1       (2) Sections 1817(c) and 1841(c) of such Act are each  
2 amended by striking out “under the Second Liberty Bond  
3 Act, as amended” and inserting in lieu thereof “under chap-  
4 ter 31 of title 31, United States Code”.

5       (3) Section 1818(c)(1) of such Act is amended by strik-  
6 ing out “Act” and inserting in lieu thereof “section”.

7       (4) Section 1818(d)(2) of such Act is amended by strik-  
8 ing out “if midway between multiples of \$1” and inserting in  
9 lieu thereof “, if a multiple of 50 cents but not a multiple of  
10 \$1,”.

11       (5) Section 1833(a)(2) of such Act is amended by indent-  
12 ing subparagraphs (A) and (B) two additional ems so as to  
13 align their left margins with the left margin of subparagraph  
14 (C) and by appropriately further indenting the clauses and  
15 subclauses of such subparagraphs.

16       (6) Section 1832(a)(2)(F)(ii)(II) of such Act is amended  
17 by striking out “Organization” and inserting in lieu thereof  
18 “organization”.

19       (7) Section 1833(a)(1) of such Act is amended by strik-  
20 ing out “and” at the end thereof.

21       (8) Section 1835(a)(2) of such Act is amended—

22               (A) by striking out “and” at the end of subpara-  
23 graphs (B) and (C), and

1 (B) by indenting subparagraph (D) two additional  
2 ems so as to align its left margin with the left margin  
3 of subparagraph (C).

4 (9) Section 1835(e) of such Act is amended—

5 (A) by inserting “(i)” in paragraph (2) after “writ-  
6 ten assurances that”,

7 (B) by striking out “(B)” in paragraph (2) and in-  
8 serting in lieu thereof “(ii)”,

9 (C) by striking out “return for” in paragraph (2)  
10 and inserting in lieu thereof “return of”, and

11 (D) by striking out “(1) such hospital” and “(2)  
12 the Secretary” and inserting in lieu thereof “(A) such  
13 hospital” and “(B) the Secretary”, respectively.

14 (10) Section 1837(g)(1) of such Act is amended by strik-  
15 ing out “section 226(a)(2)(B)” and “section 1839(e)” and in-  
16 serting in lieu thereof “section 226(b)” and “section  
17 1839(d)”, respectively.

18 (11) Sections 1840(d)(1), 1840(d)(2), and 1841(h) of  
19 such Act are each amended by striking out “Civil Service  
20 Commission” and inserting in lieu thereof “Director of the  
21 Office of Personnel Management” each place it appears.

22 (12) Section 1841(h) of such Act is amended by striking  
23 out “it” and inserting in lieu thereof “the Director”.

24 (13) Section 1842(b)(3)(B)(ii)(II) of such Act is amended  
25 by striking out the period following “title”.

1       (14) The seventh sentence of section 1842(b) of such  
2 Act is amended by striking out “(i)” and “(ii)” and inserting  
3 in lieu thereof “(I)” and “(II)”, respectively.

4       (15) Section 1842(h)(3) of such Act is amended by strik-  
5 ing out “lowest charged” and insert in lieu thereof “lowest  
6 charge”.

7       (16) Section 1843(d)(3)(B) of such Act is amended by  
8 striking out “1937” and inserting in lieu thereof “1974”.

9       (17) Section 1844(a)(1)(B)(ii) of such Act is amended by  
10 striking out the period and inserting in lieu thereof “; plus”.

11       (18) Sections 1864(c) and 1875(b) of such Act are each  
12 amended by striking out “the” after “Joint Commission on”.

13       (19) Section 1861(j)(2) of such Act is amended by strik-  
14 ing out “provision of” and inserting in lieu thereof “provision  
15 for”.

16       (20) Section 1861(j)(13) of such Act is amended by  
17 striking out “a nursing home” and inserting in lieu thereof  
18 “an institution”.

19       (21) Section 1861(u) of such Act is amended by striking  
20 out “or” before “home health agency”.

21       (22) Section 1861(v)(1) of such Act is amended—

22               (A) by redesignating the clause (B) in subpara-  
23 graph (A) as subparagraph (B) with the first line of  
24 such subparagraph indented 2 ems;



1 (B) by aligning subparagraphs (C) and (D) flush  
2 with the left margin (but with appropriate indentation  
3 in the case of the clauses and subclauses of subpara-  
4 graph (C)); and

5 (C) by inserting a comma after “section  
6 1832(a)(2)(B)(i)” in subparagraph (D).

7 (23) Section 1861(v)(1)(C)(i) of such Act is amended by  
8 inserting a dash after “but only if”.

9 (24) Section 1861(v)(1)(E)(ii) of such Act is amended by  
10 striking out “uses” and inserting in lieu thereof “use”.

11 (25) Section 1861(v)(1)(I) of such Act is amended by  
12 striking out “to the Secretary, or upon request to the Comp-  
13 troller General” in clauses (i) and (ii) and inserting in lieu  
14 thereof “by the Secretary, or upon request by the Comptrol-  
15 ler General”.

16 (26) Section 1861(v)(3) of such Act is amended by strik-  
17 ing out “semiprivate” and inserting in lieu thereof “semi-  
18 private”.

19 (27) Section 1861(z)(2) of such Act is amended by strik-  
20 ing out “subparagraph (1)” and inserting in lieu thereof  
21 “paragraph (1)”.

22 (28) Section 1861(aa)(2)(I) of such Act is amended by  
23 striking out “utilization” and inserting in lieu thereof “utili-  
24 zation”.

1       (29) Section 1861(cc)(1)(F) of such Act is amended by  
2 striking out “self administered” and inserting in lieu thereof  
3 “self-administered”.

4       (30) Section 1861(cc)(2)(F) of such Act is amended by  
5 striking out “standard establishment” and inserting in lieu  
6 thereof “standards established”.

7       (31) Section 1862(a)(12) of such Act is amended by  
8 striking out the second comma after “dental procedure”.

9       (32) Section 1862(b)(3)(A)(iii) of such Act is amended by  
10 inserting “before the month” after “ending with the month”.

11       (33) Section 1863 of such Act is amended by striking  
12 out “(j)(11)” and inserting in lieu thereof “(j)(15)”.

13       (34) Section 1866(a)(1)(E) of such Act is amended by  
14 adding at the end a comma.

15       (35) Section 1866(b) of such Act is amended by moving  
16 the alignment of paragraph (3) two ems to the left so as to  
17 align its left margin with the left margin of paragraph (4).

18       (36) Section 1869(b)(1)(B) of such Act is amended by  
19 striking out “, or section 1818, or section 1819” and insert-  
20 ing in lieu thereof “or section 1818”.

21       (37) Section 1872 of such Act is amended—

22               (A) by striking out the comma after “206”, and

23               (B) by striking out “(f),”.

1       (38) Section 1876(b)(2)(D) of such Act is amended by  
2 striking out “paragraph (1)” and inserting in lieu thereof  
3 “subparagraph (A)”.

4       (39) Section 1876(c)(4)(A)(i) of such Act is amended by  
5 striking out “promptly as appropriate” and inserting in lieu  
6 thereof “with reasonable promptness”.

7       (40) Section 1878(c) of such Act is amended by striking  
8 out “inadmissable” and inserting in lieu thereof “inadmissi-  
9 ble”.

10       (41) Section 1878(e) of such Act is amended by striking  
11 out “, (e), and (f)” and inserting in lieu thereof “and (e)”.

12       (42) Section 1881 of such Act is amended by striking  
13 out “end-stage” and inserting in lieu thereof “end stage”  
14 each place it appears.

15       (43) Section 1886(a)(2)(B) of such Act is amended by  
16 striking out “disportionate” and inserting in lieu thereof “dis-  
17 proportionate”.

18       (44) Section 1886(b)(3)(A)(ii) of such Act is amended by  
19 inserting “of” after “in the case”.

20       (45) Section 1886(d)(3)(D)(i)(I) of such Act is amended  
21 by striking out “(C),” and inserting in lieu thereof “(C))”.

22       (c)(1)(A) Section 903(a)(4) of Public Law 96-499 is  
23 amended by striking out “new paragraph”.

24       (B) Section 937(c) of Public Law 96-499 is amended by  
25 striking out “on on” and inserting in lieu thereof “on or”.

1       (2) Section 2353(h)(1) of Public Law 97-35 is amended  
2 by striking out the comma after “XIX”.

3       (3)(A) Section 114(c)(2)(C)(ii) of Public Law 97-248 is  
4 amended by inserting “and enrolled under part B” after  
5 “part A”.

6       (B) Section 114(c)(3)(E) of Public Law 97-248 is  
7 amended—

8           (i) by striking out “section 1833(a)(1) of the Social  
9 Security Act or”, and

10          (ii) by adding before the period at the end the fol-  
11 lowing: “, or reimbursement on a reasonable cost basis  
12 under section 1833(a)(1)(A) of such Act”.

13       (C) Section 149 of Public Law 97-248 is amended by  
14 striking out “part” and inserting in lieu thereof “subtitle”.

15       (d) Section 162(i)(2) of the Internal Revenue Code of  
16 1954 is amended by striking out “213(e)” and inserting in  
17 lieu thereof “213(d)”.

18       (e)(1) Except as provided in paragraph (2), the amend-  
19 ments made by this section shall be effective on the date of  
20 the enactment of this Act; but none of such amendments shall  
21 be construed as changing or affecting any right, liability,  
22 status, or interpretation which existed (under the provisions  
23 of law involved) before that date.

24       (2) The amendments made by paragraphs (1), (2), and  
25 (3) of subsection (c) shall be effective as if they had been

1 originally included in Public Laws 96-499, 97-35, and 97-  
2 248, respectively.

## 3 **TITLE VII—TAX-EXEMPT BOND** 4 **PROVISIONS**

### 5 **SEC. 701. SHORT TITLE; TABLE OF CONTENTS.**

6 (a) **SHORT TITLE.**—This title may be cited as the  
7 “Tax-Exempt Bond Limitation Act of 1984”.

8 (b) **TABLE OF CONTENTS.**—

#### **TITLE VII—TAX-EXEMPT BOND PROVISIONS**

Sec. 701. Short title; table of contents.

##### **Subtitle A—Mortgage Subsidy Bonds**

Sec. 711. Extension of mortgage subsidy bond authority.

Sec. 712. Mortgage credit certificates.

##### **Subtitle B—Private Activity Bonds**

Sec. 721. Limitation on aggregate amount of private activity bonds.

Sec. 722. Tax exemption denied for obligation directly or indirectly guaranteed by  
Federal Government.

Sec. 723. Aggregate limit per taxpayer for small issue exception.

Sec. 724. Limitations on acquisitions of land, existing facilities, etc.

Sec. 725. Miscellaneous industrial development bond provisions.

Sec. 726. Effective dates.

##### **Subtitle C—Obligations of Certain Educational Organizations**

Sec. 731. Tax-exempt status of obligations of certain educational organizations.

## 9 **Subtitle A—Mortgage Subsidy Bonds**

### 10 **SEC. 711. EXTENSION OF MORTGAGE SUBSIDY BOND** 11 **AUTHORITY.**

12 (a) **GENERAL RULE.**—Subparagraph (B) of section  
13 103A(c)(1) (defining qualified mortgage bond) is amended by  
14 striking out “December 31, 1983” each place it appears and  
15 inserting in lieu thereof “December 31, 1988”.



“(1) For treatment of certain organizations providing child care, see section 501(k).”

1 (c) **EFFECTIVE DATES.**—The amendments made by  
2 subsections (a) and (b) shall apply to taxable years beginning  
3 after the date of the enactment of this Act.

## 4 **TITLE IX—SOCIAL SECURITY** 5 **DISABILITY BENEFITS REFORM**

### 6 **SEC. 900. SHORT TITLE; TABLE OF CONTENTS.**

7 This title may be cited as the “Social Security Disabil-  
8 ity Benefits Reform Act of 1983”.

#### **TABLE OF CONTENTS**

Sec. 900. Short title; table of contents.

#### **Subtitle A—Standards of Disability**

Sec. 901. Standard of review for termination of disability benefits and periods of disability

Sec. 902. Study concerning evaluation of pain.

Sec. 903. Multiple impairments.

#### **Subtitle B—Disability Determination Process**

Sec. 911. Moratorium on mental impairment reviews.

Sec. 912. Review procedure governing disability determinations affecting continued entitlement to disability benefits; demonstration projects relating to review of other disability determinations.

Sec. 913. Continuation of benefits during appeal.

Sec. 914. Qualifications of medical professionals evaluating mental impairments.

Sec. 915. Regulatory standards for consultative examinations.

#### **Subtitle C—Miscellaneous Provisions**

Sec. 921. Administrative procedure and uniform standards.

Sec. 922. Compliance with court of appeals decisions.

Sec. 923. Payment of costs of rehabilitation services.

Sec. 924. Advisory Council on Medical Aspects of Disability.

Sec. 925. Qualifying experience for appointment of certain staff attorneys to administrative law judge positions.

Sec. 926. SSI benefits for individuals who perform substantial gainful activity despite severe medical impairment.

Sec. 927. Additional functions of Advisory Council; work evaluations in case of applicants for and recipients of SSI benefits based on disability.

Sec. 928. Effective date.

## 1      **Subtitle A—Standards of Disability**

### 2      **SEC. 901. STANDARD OF REVIEW FOR TERMINATION OF DIS-** 3                                    **ABILITY BENEFITS AND PERIODS OF DISABIL-** 4                                    **ITY.**

5            (a) Section 223 of the Social Security Act is amended  
6 by inserting after subsection (e) the following new subsection:

7      “Standard of Review for Termination of Disability Benefits

8            “(f) A recipient of benefits under this title or title XVIII  
9 based on the disability of any individual may be determined  
10 not to be entitled to such benefits on the basis of a finding  
11 that the physical or mental impairment on the basis of which  
12 such benefits are provided has ceased, does not exist, or is  
13 not disabling only if such finding is supported by—

14            “(1) substantial evidence which demonstrates that  
15 there has been medical improvement in the individual’s  
16 impairment or combination of impairments so that—

17            “(A) the individual is now able to engage in  
18 substantial gainful activity, or

19            “(B) if the individual is a widow or surviving  
20 divorced wife under section 202(e) or a widower  
21 or surviving divorced husband under section  
22 202(f), the severity of his or her impairment or  
23 impairments is no longer deemed under regula-  
24 tions prescribed by the Secretary sufficient to pre-

1           clude the individual from engaging in gainful ac-  
2           tivity; or

3           “(2) substantial evidence which—

4                   “(A) consists of new medical evidence and  
5           (in a case to which clause (ii) does not apply) a  
6           new assessment of the individual’s residual func-  
7           tional capacity and demonstrates that, although  
8           the individual has not improved medically, he or  
9           she is nonetheless a beneficiary of advances in  
10          medical or vocational therapy or technology so  
11          that—

12                   “(i) the individual is now able to engage  
13          in substantial gainful activity, or

14                   “(ii) if the individual is a widow or sur-  
15          viving divorced wife under section 202(e) or  
16          a widower or surviving divorced husband  
17          under section 202(f), the severity of his or  
18          her impairment or impairments is no longer  
19          deemed under regulations prescribed by the  
20          Secretary sufficient to preclude the individual  
21          from engaging in gainful activity; or

22                   “(B) demonstrates that, although the individ-  
23          ual has not improved medically, he or she has un-  
24          dergone vocational therapy so that the require-

1           ments of clause (i) or (ii) of subparagraph (A) are  
2           met; or

3           “(3) substantial evidence which demonstrates that,  
4           as determined on the basis of new or improved diag-  
5           nostic techniques or evaluations, the individual’s im-  
6           pairment or combination of impairments is not as dis-  
7           abling as it was considered to be at the time of the  
8           most recent prior decision that he or she was under a  
9           disability or continued to be under a disability, and that  
10          therefore—

11                 “(A) the individual is able to engage in sub-  
12          stantial gainful activity, or

13                 “(B) if the individual is a widow or surviving  
14          divorced wife under section 202(e) or a widower  
15          or surviving divorced husband under section  
16          202(f), the severity of his or her impairment or  
17          impairments is not deemed under regulations pre-  
18          scribed by the Secretary sufficient to preclude the  
19          individual from engaging in gainful activity.

20          Nothing in this subsection shall be construed to require a  
21          determination that a recipient of benefits under this title or  
22          title XVIII based on an individual’s disability is entitled to  
23          such benefits if evidence on the record at the time any prior  
24          determination of such entitlement to disability benefits was  
25          made, or new evidence which relates to that determination,

1 shows that the prior determination was either clearly errone-  
2 ous at the time it was made or was fraudulently obtained, or  
3 if the individual is engaged in substantial gainful activity. In  
4 any case in which there is no available medical evidence sup-  
5 porting a prior disability determination, nothing in this sub-  
6 section shall preclude the Secretary, in attempting to meet  
7 the requirements of the preceding provisions of this subsec-  
8 tion, from securing additional medical reports necessary to  
9 reconstruct the evidence which supported such prior disabili-  
10 ty determination. For purposes of this subsection, a benefit  
11 under this title is based on an individual's disability if it is a  
12 disability insurance benefit, a child's, widow's, or widower's  
13 insurance benefit based on disability, or a mother's or father's  
14 insurance benefit based on the disability of the mother's or  
15 father's child who has attained age 16."

16 (b) Section 216(i)(2)(D) of such Act is amended by  
17 adding at the end thereof the following: "A period of disabili-  
18 ty may be determined to end on the basis of a finding that  
19 the physical or mental impairment on the basis of which the  
20 finding of disability was made has ceased, does not exist, or is  
21 not disabling only if such finding is supported by substantial  
22 evidence described in paragraph (1), (2), or (3) of section  
23 223(f). Nothing in the preceding sentence shall be construed  
24 to require a determination that a period of disability continues  
25 if evidence on the record at the time any prior determination



1 of such period of disability was made, or new evidence which  
2 relates to such determination, shows that the prior determi-  
3 nation was either clearly erroneous at the time it was made  
4 or was fraudulently obtained, or if the individual is engaged  
5 in substantial gainful activity. In any case in which there is  
6 no available medical evidence supporting a prior disability  
7 determination, nothing in this subparagraph shall preclude  
8 the Secretary, in attempting to meet the requirements of the  
9 preceding provisions of this subparagraph, from securing ad-  
10 ditional medical reports necessary to reconstruct the evidence  
11 which supported such prior disability determination.”.

12 (c) Section 1614(a) of such Act is amended by adding at  
13 the end thereof the following new paragraph:

14 “(5) A recipient of benefits based on disability under this  
15 title may be determined not be to entitled to such benefits on  
16 the basis of a finding that the physical or mental impairment  
17 on the basis of which such benefits are provided has ceased,  
18 does not exist, or is not disabling only if such finding is sup-  
19 ported by—

20 “(A) substantial evidence which demonstrates that  
21 there has been medical improvement in the individual’s  
22 impairment or combination of impairments so that the  
23 individual is now able to engage in substantial gainful  
24 activity; or

1           “(B) substantial evidence (except in the case of an  
2 individual eligible to receive benefits under section  
3 1619) which—

4           “(i) consists of new medical evidence and a  
5 new assessment of the individual’s residual func-  
6 tional capacity and demonstrates that, although  
7 the individual has not improved medically, he or  
8 she is nonetheless a beneficiary of advances in  
9 medical or vocational therapy or technology so  
10 that the individual is now able to engage in sub-  
11 stantial gainful activity, or

12           “(ii) demonstrates that, although the individ-  
13 ual has not improved medically, he or she has un-  
14 dergone vocational therapy so that he or she is  
15 now able to engage in substantial gainful activity;  
16 or

17           “(C) substantial evidence which demonstrates  
18 that, as determined on the basis of new or improved  
19 diagnostic techniques or evaluations, the individual’s  
20 impairment or combination of impairments is not as  
21 disabling as it was considered to be at the time of the  
22 most recent prior decision that he or she was under a  
23 disability or continued to be under a disability, and that  
24 therefore the individual is able to engage in substantial  
25 gainful activity.

1 Nothing in this paragraph shall be construed to require a  
2 determination that a recipient of benefits under this title  
3 based on disability is entitled to such benefits if evidence on  
4 the record at the time any prior determination of such entitle-  
5 ment to benefits was made, or new evidence which relates to  
6 that determination, shows that the prior determination was  
7 either clearly erroneous at the time it was made or was  
8 fraudulently obtained, or if the individual (unless he or she is  
9 eligible to receive benefits under section 1619) is engaged in  
10 substantial gainful activity. In any case in which there is no  
11 available medical evidence supporting a prior determination  
12 of disability nothing in this paragraph shall preclude the Sec-  
13 retary, in attempting to meet the requirements of the preced-  
14 ing provisions of this paragraph, from securing additional  
15 medical reports necessary to reconstruct the evidence which  
16 supported such prior determination.”.

17 **SEC. 902. STUDY CONCERNING EVALUATION OF PAIN.**

18 (a) The Secretary of Health and Human Services shall,  
19 in conjunction with the National Academy of Sciences, con-  
20 duct a study of the issues concerning (1) the use of subjective  
21 evidence of pain, including statements of the individual alleg-  
22 ing such pain as to the intensity and persistence of such pain  
23 and corroborating evidence provided by treating physicians,  
24 family, neighbors, or behavioral indicia, in determining under  
25 section 221 or title XVI of the Social Security Act whether

1 an individual is under a disability, and (2) the state of the art  
2 of preventing, reducing, or coping with pain.

3 (b) The Secretary shall submit the results of the study  
4 under subsection (a), together with any recommendations, to  
5 the Committee on Ways and Means of the House of Repre-  
6 sentatives and the Committee on Finance of the Senate not  
7 later than April 1, 1985.

8 **SEC. 903. MULTIPLE IMPAIRMENTS.**

9 (a)(1) Section 223(d)(2) of the Social Security Act is  
10 amended by adding at the end thereof the following new sub-  
11 paragraph:

12 “(C) In determining whether an individual’s phys-  
13 ical or mental impairment or impairments are of such  
14 severity that he or she is unable to engage in substan-  
15 tial gainful activity, the Secretary shall consider the  
16 combined effect of all of the individual’s impairments  
17 without regard to whether any such impairment, if  
18 considered separately, would be of such severity.”.

19 (2) The third sentence of section 216(i)(1) of such Act is  
20 amended by inserting “(2)(C),” after “(2)(A),”.

21 (b) Section 1614(a)(3) of such Act is amended by adding  
22 at the end thereof the following new subparagraph:

23 “(G) In determining whether an individual’s physical or  
24 mental impairment or impairments are of such severity that  
25 he or she is unable to engage in substantial gainful activity,

1 the Secretary shall consider the combined effect of all of the  
2 individual's impairments without regard to whether any  
3 such impairment, if considered separately, would be of such  
4 severity.".

## 5     **Subtitle B—Disability Determination** 6                                   **Process**

### 7     SEC. 911. MORATORIUM ON MENTAL IMPAIRMENT REVIEWS.

8             (a) The Secretary of Health and Human Services (here-  
9 after in this section referred to as the "Secretary") shall  
10 revise the criteria embodied under the category "Mental Dis-  
11 orders" in the "Listing of Impairments" in effect on the date  
12 of the enactment of this Act under appendix 1 to subpart P of  
13 part 404 of title 20 of the Code of Federal Regulations. The  
14 revised criteria and listings, alone and in combination with  
15 assessments of the residual functional capacity of the individ-  
16 uals involved, shall be designed to realistically evaluate the  
17 ability of a mentally impaired individual to engage in substan-  
18 tial gainful activity in a competitive workplace environment.  
19 Regulations establishing such revised criteria and listings  
20 shall be published no later than nine months after the date of  
21 the enactment of this Act.

22             (b) The Secretary shall make the revisions pursuant to  
23 subsection (a) in consultation with the Advisory Council on  
24 the Medical Aspects of Disability (established by section 924



1 of this Act), and shall take the advice and recommendations  
2 of such Council fully into account in making such revisions.

3 (c)(1) Until such time as revised criteria have been es-  
4 tablished by regulation in accordance with subsection (a), no  
5 continuing eligibility review shall be carried out under section  
6 221(h) of the Social Security Act (as redesignated by section  
7 914(1) of this Act), or under the corresponding requirements  
8 established for disability determinations and reviews under  
9 title XVI of such Act, with respect to any individual previ-  
10 ously determined to be under a disability by reason of a  
11 mental impairment, if—

12 (A) no initial decision on such review has been  
13 rendered with respect to such individual prior to the  
14 date of the enactment of this Act, or

15 (B) an initial decision on such review was ren-  
16 dered with respect to such individual prior to the date  
17 of the enactment of this Act but a timely appeal from  
18 such decision was filed or was pending on or after  
19 June 7, 1983.

20 For purposes of this paragraph and subsection (d)(1) the term  
21 “continuing eligibility review”, when used to refer to a  
22 review of a previous determination of disability, includes any  
23 reconsideration of or hearing on the initial decision rendered  
24 in such review as well as such initial decision itself, and any  
25 review by the Appeals Council of the hearing decision.

1       (2) Paragraph (1) shall not apply in any case where the  
2 Secretary determines that fraud was involved in the prior  
3 determination, or where an individual (other than an individ-  
4 ual eligible to receive benefits under section 1619 of the  
5 Social Security Act) is determined by the Secretary to be  
6 engaged in substantial gainful activity.

7       (d)(1) Any initial determination that an individual is not  
8 under a disability by reason of a mental impairment and any  
9 determination that an individual is not under a disability by  
10 reason of a mental impairment in a reconsideration of or  
11 hearing on an initial disability determination, made or held  
12 under title II or XVI of the Social Security Act after the  
13 date of the enactment of this Act and prior to the date on  
14 which revised criteria are established by regulation in accord-  
15 ance with subsection (a), and any determination that an indi-  
16 vidual is not under a disability by reason of a mental impair-  
17 ment made under or in accordance with title II or XVI of  
18 such Act in a reconsideration of, hearing on, or judicial  
19 review of a decision rendered in any continuing eligibility  
20 review to which subsection (c)(1) applies, shall be redeter-  
21 mined by the Secretary as soon as feasible after the date on  
22 which such criteria are so established, applying such revised  
23 criteria.

24       (2) In the case of a redetermination under paragraph (1)  
25 of a prior action which found that an individual was not

1 under a disability, if such individual is found on redetermina-  
2 tion to be under a disability, such redetermination shall be  
3 applied as though it had been made at the time of such prior  
4 action.

5 (3) Any individual with a mental impairment who was  
6 found to be not disabled pursuant to an initial disability deter-  
7 mination or a continuing eligibility review between March 1,  
8 1981, and the date of the enactment of this Act, and who  
9 reapplies for benefits under title II or XVI of the Social Se-  
10 curity Act, may be determined to be under a disability during  
11 the period considered in the most recent prior determination.  
12 Any reapplication under this paragraph must be filed within  
13 one year after the date of the enactment of this Act, and  
14 benefits payable as a result of the preceding sentence shall be  
15 paid only on the basis of the reapplication.

16 **SEC. 912. REVIEW PROCEDURE GOVERNING DISABILITY DE-**  
17 **TERMINATIONS AFFECTING CONTINUED ENTI-**  
18 **TLEMENT TO DISABILITY BENEFITS; DEMON-**  
19 **STRATION PROJECTS RELATING TO REVIEW OF**  
20 **OTHER DISABILITY DETERMINATIONS.**

21 (a)(1) Section 221(d) of the Social Security Act is  
22 amended—

23 (A) by striking out “Any” and inserting in lieu  
24 thereof “(1) Except in cases to which paragraph (2)  
25 applies, any”; and

1 (B) by adding at the end thereof the following  
2 new paragraph:

3 “(2)(A) In any case where—

4 “(i) an individual is a recipient of disability insur-  
5 ance benefits, child’s, widow’s, or widower’s insurance  
6 benefits based on disability, mother’s or father’s insur-  
7 ance benefits based on the disability of the mother’s or  
8 father’s child who has attained age 16, or benefits  
9 under title XVIII based on disability, and

10 “(ii) the physical or mental impairment on the  
11 basis of which such benefits are payable is determined  
12 by a State agency (or the Secretary in a case to which  
13 subsection (g) applies) to have ceased, not to have ex-  
14 isted, or to no longer be disabling,

15 such individual shall be entitled to notice and opportunity for  
16 review as provided in this paragraph.

17 “(B)(i) Any determination referred to in subparagraph  
18 (A)(ii)—

19 “(I) which has been prepared for issuance under  
20 this section by a State agency (or the Secretary) for  
21 the purpose of providing a basis for a decision of the  
22 Secretary with regard to the individual’s continued  
23 rights to benefits under this title (including any decision  
24 as to whether an individual’s rights to benefits are ter-  
25 minated or otherwise changed), and

1           “(II) which is in whole or in part unfavorable to  
2       such individual,

3 shall remain pending until after the notice and opportunity  
4 for review provided in this subparagraph.

5       “(ii) Any such pending determination shall contain a  
6 statement of the case, in understandable language, setting  
7 forth a discussion of the evidence and stating such determina-  
8 tion, the reason or reasons upon which such determination is  
9 based, the right to a review of such determination (including  
10 the right to make a personal appearance as provided in this  
11 subparagraph), the right to submit additional evidence prior  
12 to or during such review as provided in this clause, and that,  
13 if such review is not requested, the individual will not be  
14 entitled to a hearing on such determination and such determi-  
15 nation will be the disability determination upon which the  
16 final decision of the Secretary on entitlement will be based.  
17 Such statement of the case shall be transmitted in writing to  
18 such individual. Upon request by any such individual, or by a  
19 wife, divorced wife, widow, surviving divorced wife, surviv-  
20 ing divorced mother, husband, divorced husband, widower,  
21 surviving divorced husband, surviving divorced father, child,  
22 or parent, who makes a showing in writing that his or her  
23 rights may be prejudiced by such determination, he or she  
24 shall be entitled to a review by the State agency (or the  
25 Secretary in a case to which subsection (g) applies) of such



1 determination, including the right of such individual to make  
2 a personal appearance, and may submit additional evidence  
3 for purposes of such review prior to or during such review.  
4 Any such request must be filed within 30 days after notice of  
5 the pending determination is received by the individual  
6 making such request. Any review carried out by a State  
7 agency under this subparagraph shall be made in accordance  
8 with the pertinent provisions of this title and regulations  
9 thereunder.

10       “(iii) A review under this subparagraph shall include a  
11 review of evidence and medical history in the record at the  
12 time such disability determination is pending, shall examine  
13 any new medical evidence submitted or obtained for purposes  
14 of the review, and shall afford the individual requesting the  
15 review the opportunity to make a personal appearance with  
16 respect to the case at a place which is reasonably accessible  
17 to such individual.

18       “(iv) On the basis of the review carried out under this  
19 subparagraph, the State agency (or the Secretary in a case to  
20 which subsection (g) applies) shall affirm or modify the pend-  
21 ing determination and issue the pending determination, as so  
22 affirmed or modified, as the disability determination under  
23 subsection (a), (c), (g), or (h) (as applicable).

24       “(C) Any disability determination described in subpara-  
25 graph (A)(ii) which is issued by the State agency (or the Sec-

1 retary) and which is in whole or in part unfavorable to the  
2 individual requesting the review shall contain a statement of  
3 the case, in understandable language, setting forth a discus-  
4 sion of the evidence, and stating the determination, the  
5 reason or reasons upon which the determination is based, the  
6 right (in the case of an individual who has exercised the right  
7 to review under subparagraph (B)) of such individual to a  
8 hearing under subparagraph (D), and the right to submit ad-  
9 ditional evidence prior to or at such a hearing. Such state-  
10 ment of the case shall be transmitted in writing to such indi-  
11 vidual and his or her representative (if any).

12       “(D)(i) An individual who has exercised the right to  
13 review under subparagraph (B) and who is dissatisfied with  
14 the disability determination referred to in subparagraph (C)  
15 shall be entitled to a hearing thereon to the same extent as is  
16 provided in section 205(b) with respect to decisions of the  
17 Secretary on which hearings are required under such section,  
18 and to judicial review of the Secretary’s final decision after  
19 such hearing as is provided in section 205(g). Nothing in this  
20 section shall be construed to deny an individual his or her  
21 right to notice and opportunity for hearing under section  
22 205(b) with respect to matters other than the determination  
23 referred to in subparagraph (A)(ii).

24       “(ii) Any hearing referred to in clause (i) shall be held  
25 before an administrative law judge who has been duly ap-

1 pointed in accordance with section 3105 of title 5, United  
2 States Code.”.

3 (2) Section 205(b)(1) of such Act is amended by insert-  
4 ing after the fourth sentence the following new sentence:  
5 “Reviews of disability determinations on which decisions re-  
6 lating to continued entitlement to benefits are based shall be  
7 governed by the provisions of section 221(d)(2).”.

8 (b)(1) Section 205(b) of such Act (as amended by subsec-  
9 tion (a)(2)) is further amended—

10 (A) by striking out “(1)” after “(b)”; and

11 (B) by striking out paragraph (2).

12 (2) Section 4 of Public Law 97-455 (relating to eviden-  
13 tiary hearings in reconsiderations of disability benefit termi-  
14 nations) (96 Stat. 2499) and section 5 of such Act (relating to  
15 conduct of face-to-face reconsiderations in disability cases)  
16 (96 Stat. 2500) are repealed.

17 (c) Section 223(g) of the Social Security Act (as amend-  
18 ed by section 913(a) of this Act) is further amended—

19 (1) in paragraph (1)(C), by striking out “for a  
20 hearing under section 221(d), or for an administrative  
21 review prior to such hearing” and inserting in lieu  
22 thereof “for review under section 221(d)(2)(B) or for a  
23 hearing under section 221(d)(2)(D)”;

1           (2) in paragraph (1)(ii), by striking out “a hearing  
2           or an administrative review” and inserting in lieu  
3           thereof “review or a hearing”; and

4           (3) in paragraph (3), by striking out “a hearing  
5           under section 221(d), or for an administrative review  
6           prior to such hearing” and inserting in lieu thereof  
7           “review under section 221(d)(2)(B) or for a hearing  
8           under section 221(d)(2)(D)”.

9           (d) The amendments made by this section shall apply  
10          with respect to determinations (referred to in section  
11          221(d)(2)(A)(ii) of the Social Security Act (as amended by this  
12          section)), and determinations under the corresponding re-  
13          quirements established for disability determinations and re-  
14          views under title XVI of such Act, which are issued after  
15          December 31, 1984.

16          (e) The Secretary of Health and Human Services shall,  
17          as soon as practicable after the date of the enactment of this  
18          Act, implement as demonstration projects the amendments  
19          made by this section with respect to all disability determina-  
20          tions under subsections (a), (c), (g), and (h) of section 221 of  
21          the Social Security Act, and with respect to all disability  
22          determinations under title XVI of such Act in the same  
23          manner and to the same extent as is provided in such amend-  
24          ments with respect to determinations referred to in section  
25          221(d)(2)(A)(ii) of such Act (as amended by this section).

1 Such demonstration projects shall be conducted in not fewer  
2 than five States. The Secretary shall report to the Committee  
3 on Ways and Means of the House of Representatives and the  
4 Committee on Finance of the Senate concerning such demon-  
5 stration projects, together with any recommendations, not  
6 later than April 1, 1985.

7 **SEC. 913. CONTINUATION OF BENEFITS DURING APPEAL.**

8 (a)(1) Section 223(g)(1) of the Social Security Act is  
9 amended—

10 (A) in the matter following subparagraph (C), by  
11 striking out “and the payment of any other benefits  
12 under this Act based on such individual’s wages and  
13 self-employment income (including benefits under title  
14 XVIII),” and inserting in lieu thereof “, the payment  
15 of any other benefits under this title based on such in-  
16 dividual’s wages and self-employment income, the pay-  
17 ment of mother’s or father’s insurance benefits to such  
18 individual’s mother or father based on the disability of  
19 such individual as a child who has attained age 16, and  
20 the payment of benefits under title XVIII based on  
21 such individual’s disability,”;

22 (B) in clause (i), by inserting “or” after “hear-  
23 ing,”; and

24 (C) by striking out “, or (iii) June 1984”.



1       (2) Section 223(g)(3) of such Act is amended by striking  
2 out “which are made” and all that follows down through the  
3 end thereof and inserting in lieu thereof the following: “which  
4 are made on or after the date of the enactment of this subsec-  
5 tion, or prior to such date but only on the basis of a timely  
6 request for a hearing under section 221(d), or for an adminis-  
7 trative review prior to such hearing.”.

8       (b) Section 1631(a) of such Act is amended by adding at  
9 the end thereof the following new paragraph:

10       “(7)(A) In any case where—

11               “(i) an individual is a recipient of benefits based  
12 on disability or blindness under this title,

13               “(ii) the physical or mental impairment on the  
14 basis of which such benefits are payable is found to  
15 have ceased, not to have existed, or to no longer be  
16 disabling, and as a consequence such individual is de-  
17 termined not to be entitled to such benefits, and

18               “(iii) a timely request for review or for a hearing  
19 is pending with respect to the determination that he is  
20 not so entitled,

21 such individual may elect (in such manner and form and  
22 within such time as the Secretary shall by regulations pre-  
23 scribe) to have the payment of such benefits continued for an  
24 additional period beginning with the first month beginning  
25 after the date of the enactment of this paragraph for which

1 (under such determination) such benefits are no longer other-  
2 wise payable, and ending with the earlier of (I) the month  
3 preceding the month in which a decision is made after such a  
4 hearing, or (II) the month preceding the month in which no  
5 such request for review or a hearing is pending.

6 “(B)(i) If an individual elects to have the payment of his  
7 benefits continued for an additional period under subpara-  
8 graph (A), and the final decision of the Secretary affirms the  
9 determination that he is not entitled to such benefits, any  
10 benefits paid under this title pursuant to such election (for  
11 months in such additional period) shall be considered over-  
12 payments for all purposes of this title, except as otherwise  
13 provided in clause (ii).

14 “(ii) If the Secretary determines that the individual’s  
15 appeal of his termination of benefits was made in good faith,  
16 all of the benefits paid pursuant to such individual’s election  
17 under subparagraph (A) shall be subject to waiver considera-  
18 tion under the provisions of subsection (b)(1).

19 “(C) The provisions of subparagraphs (A) and (B) shall  
20 apply with respect to determinations (that individuals are not  
21 entitled to benefits) which are made on or after the date of  
22 the enactment of this paragraph, or prior to such date but  
23 only on the basis of a timely request for review or for a  
24 hearing.”.

1       (c)(1) The Secretary of Health and Human Services  
 2 shall, as soon as practicable after the date of the enactment  
 3 of this Act, conduct a study concerning the effect which the  
 4 enactment and continued operation of section 223(g) of the  
 5 Social Security Act is having on expenditures from the Fed-  
 6 eral Old-Age and Survivors Insurance Trust Fund, the Fed-  
 7 eral Disability Insurance Trust Fund, the Federal Hospital  
 8 Insurance Trust Fund, and the Federal Supplementary Medi-  
 9 cal Insurance Trust Fund, and the rate of appeals to adminis-  
 10 trative law judges of unfavorable determinations relating to  
 11 disability or periods of disability.

12       (2) The Secretary shall submit the results of the study  
 13 under paragraph (1), together with any recommendations, to  
 14 the Committee on Ways and Means of the House of Repre-  
 15 sentatives and the Committee on Finance of the Senate not  
 16 later than July 1, 1986.

17 **SEC. 914. QUALIFICATIONS OF MEDICAL PROFESSIONALS**  
 18 **EVALUATING MENTAL IMPAIRMENTS.**

19       Section 221 of the Social Security Act is amended—

20       (1) by redesignating subsection (i) as subsection  
 21       (h); and

22       (2) by adding at the end thereof the following new  
 23       subsection:

24       “(i) A determination under subsection (a), (c), (g), or (h)  
 25       that an individual is not under a disability by reason of a

1 mental impairment shall be made only if, before its issuance  
 2 by the State (or the Secretary), a qualified psychiatrist or  
 3 psychologist who is employed by the State agency or the  
 4 Secretary (or whose services are contracted for by the State  
 5 agency or the Secretary) has completed the medical portion  
 6 of the case review, including any applicable residual function-  
 7 al capacity assessment.”.

8 **SEC. 915. REGULATORY STANDARDS FOR CONSULTATIVE EX-**  
 9 **AMINATIONS.**

10 Section 221 of the Social Security Act (as amended by  
 11 section 914 of this Act) is further amended by adding at the  
 12 end thereof the following new subsection:

13 “(j) The Secretary shall prescribe regulations which set  
 14 forth, in detail—

15 “(1) the standards to be utilized by State disabil-  
 16 ity determination services and Federal personnel in de-  
 17 termining when a consultative examination should be  
 18 obtained in connection with disability determinations;

19 “(2) standards for the type of referral to be made;  
 20 and

21 “(3) procedures by which the Secretary will moni-  
 22 tor both the referral processes used and the product of  
 23 professionals to whom cases are referred.

24 Nothing in this subsection shall be construed to preclude the  
 25 issuance, in accordance with section 553(b)(A) of title 5,

1 United States Code, of interpretive rules, general statements  
2 of policy, and rules of agency organization relating to consul-  
3 tative examinations if such rules and statements are consist-  
4 ent with such regulations.”.

## 5 **Subtitle C—Miscellaneous Provisions**

### 6 **SEC. 921. ADMINISTRATIVE PROCEDURE AND UNIFORM** 7 **STANDARDS.**

8 (a) Section 205(b) of the Social Security Act (as amend-  
9 ed by sections 912(a)(2) and 912(b)(1) of this Act) is further  
10 amended—

11 (1) by inserting “(1)” after “(b)”; and

12 (2) by adding at the end thereof the following new  
13 paragraph:

14 “(2) Notwithstanding subsection (a)(2) of section 553 of  
15 title 5, United States Code, the rulemaking requirements of  
16 subsections (b) through (e) of such section shall apply to mat-  
17 ters relating to benefits under this title. With respect to mat-  
18 ters to which rulemaking requirements under the preceding  
19 sentence apply, only those rules prescribed pursuant to sub-  
20 sections (b) through (e) of such section 553 and related provi-  
21 sions governing notice and comment rulemaking under sub-  
22 chapter II of chapter 5 of such title 5 (relating to administra-  
23 tive procedure) shall be binding at any level of review by a  
24 State agency or the Secretary, including any hearing before  
25 an administrative law judge.”.



1 (b) Section 1631(d)(1) of such Act is amended by insert-  
2 ing “(b)(2),” after “(a),”.

3 **SEC. 922. COMPLIANCE WITH COURT OF APPEALS DECISIONS.**

4 (a) Title II of the Social Security Act is amended by  
5 adding at the end the following new section:

6 “COMPLIANCE WITH COURT OF APPEALS DECISIONS

7 “SEC. 234. (a) Except as provided in subsection (b), if,  
8 in any decision in a case to which the Department of Health  
9 and Human Services or an officer or employee thereof is a  
10 party, a United States court of appeals—

11 “(1) interprets a provision of this title or of any  
12 regulation prescribed under this title, and

13 “(2) requires such Department or such officer or  
14 employee to apply or carry out the provision in a  
15 manner which varies from the manner in which the  
16 provision is generally applied or carried out in the cir-  
17 cuit involved,

18 the Secretary shall acquiesce in the decision and apply the  
19 interpretation with respect to all individuals and circum-  
20 stances covered by the provision in the circuit until a differ-  
21 ent result is reached by a ruling by the Supreme Court of the  
22 United States on the issue involved or by a subsequently en-  
23 acted provision of Federal law.

24 “(b) Acquiescence shall not be required under subsection  
25 (a) during the pendency of any direct appeal of the case by

1 the Secretary under section 1252 of title 28, United States  
2 Code, or any request for review of the case by the Secretary  
3 under section 1254 of such title if such direct appeal or re-  
4 quest for review is filed during the period of time allowed for  
5 such filing. If the Supreme Court finds that the requirements  
6 for the direct appeal under such section 1252 have not been  
7 met or denies a request for review under such section 1254,  
8 the Secretary shall resume acquiescence in the decision of the  
9 court of appeals in accordance with subsection (a) from the  
10 date of such finding or denial.”.

11 (b) Section 1633 of such Act is amended by adding at  
12 the end thereof the following new subsection:

13 “(c) Section 234 shall apply with respect to decisions of  
14 United States courts of appeals involving interpretations of  
15 provisions of this title or of regulations prescribed under this  
16 title (and requiring action with respect to such provisions) in  
17 the same manner and to the same extent as it applies with  
18 respect to decisions involving interpretations of provisions of  
19 title II or of regulations prescribed thereunder (and requiring  
20 action with respect to such provisions).”.

21 (c) The amendments made by subsections (a) and (b) of  
22 this section shall not apply with respect to a decision by a  
23 United States court of appeals in any case if the period al-  
24 lowed for filing the direct appeal or request for review of the

1 case with the Supreme Court of the United States expired  
2 before the date of the enactment of this Act.

3 **SEC. 923. PAYMENT OF COSTS OF REHABILITATION SERVICES.**

4 (a) The first sentence of section 222(d)(1) of the Social  
5 Security Act is amended—

6 (1) by striking out “into substantial gainful activi-  
7 ty”; and

8 (2) by striking out “which result in their perform-  
9 ance of substantial gainful activity which lasts for a  
10 continuous period of nine months” and inserting in lieu  
11 thereof the following: “(i) in cases where the furnishing  
12 of such services results in the performance by such in-  
13 dividuals of substantial gainful activity for a continuous  
14 period of nine months, (ii) in cases where such individ-  
15 uals receive benefits as a result of section 225(b)  
16 (except that no reimbursement under this paragraph  
17 shall be made for services furnished to any individual  
18 receiving such benefits for any period after the close of  
19 such individual’s ninth consecutive month of substantial  
20 gainful activity or the close of the month in which his  
21 or her entitlement to such benefits ceases, whichever  
22 first occurs), and (iii) in cases where such individuals,  
23 without good cause, refuse to accept vocational reha-  
24 bilitation services or fail to cooperate in such a manner  
25 as to preclude their successful rehabilitation”.

1       (b) The second sentence of section 222(d)(1) of such Act  
2 is amended by inserting after "substantial gainful activity"  
3 the following: " , the determination that an individual, with-  
4 out good cause, refused to accept vocational rehabilitation  
5 services or failed to cooperate in such a manner as to pre-  
6 clude successful rehabilitation,".

7       (c) The first sentence of section 1615(d) of such Act is  
8 amended by striking out "if such services result in their per-  
9 formance of substantial gainful activity which lasts for a con-  
10 tinuous period of nine months" and inserting in lieu thereof  
11 the following: "(1) in cases where the furnishing of such serv-  
12 ices results in the performance by such individuals of substan-  
13 tial gainful activity for continuous periods of nine months, (2)  
14 in cases where such individuals are determined to be no  
15 longer entitled to benefits under this title because the physi-  
16 cal or mental impairments on which the benefits are based  
17 have ceased, do not exist, or are not disabling (and no reim-  
18 bursement under this subsection shall be made for services  
19 furnished to any individual receiving such benefits for any  
20 period after the close of such individual's ninth consecutive  
21 month of substantial gainful activity or the close of the month  
22 with which his or her entitlement to such benefits ceases,  
23 whichever first occurs), and (3) in cases where such individ-  
24 uals, without good cause, refuse to accept vocational rehabili-

1 tation services or fail to cooperate in such a manner as to  
2 preclude their successful rehabilitation”.

3 (d) The amendments made by this section shall apply  
4 with respect to individuals who receive benefits as a result of  
5 section 225(b) of the Social Security Act (or who are deter-  
6 mined to be no longer entitled to benefits under title XVI of  
7 such Act because the physical or mental impairments on  
8 which the benefits are based have ceased, do not exist, or are  
9 not disabling), or who refuse to accept rehabilitation services  
10 or fail to cooperate in an approved vocational rehabilitation  
11 program, in or after the first month following the month in  
12 which this Act is enacted.

13 **SEC. 924. ADVISORY COUNCIL ON MEDICAL ASPECTS OF DIS-**  
14 **ABILITY.**

15 (a) There is hereby established in the Department of  
16 Health and Human Services an Advisory Council on the  
17 Medical Aspects of Disability (hereafter in this section re-  
18 ferred to as the “Council”).

19 (b)(1) The Council shall consist of—

20 (A) 10 members appointed by the Secretary of  
21 Health and Human Services (without regard to the re-  
22 quirements of the Federal Advisory Committee Act)  
23 within 60 days after the date of the enactment of this  
24 Act from among independent medical and vocational  
25 experts, including at least one psychiatrist, one reha-



1        bilitation psychologist, and one medical social worker;  
2        and

3                (B) the Commissioner of Social Security ex officio.

4    The Secretary shall from time to time appoint one of the  
5    members to serve as Chairman. The Council shall meet as  
6    often as the Secretary deems necessary, but not less often  
7    than twice each year.

8                (2) Members of the Council appointed under paragraph  
9    (1)(A) shall be appointed without regard to the provisions of  
10   title 5, United States Code, governing appointments in the  
11   competitive service. Such members, while attending meetings  
12   or conferences thereof or otherwise serving on the business of  
13   the Council, shall be paid at rates fixed by the Secretary, but  
14   not exceeding \$100 for each day, including traveltime, during  
15   which they are engaged in the actual performance of duties  
16   vested in the Council; and while so serving away from their  
17   homes or regular places of business they may be allowed  
18   travel expenses, including per diem in lieu of subsistence, as  
19   authorized by section 5703 of title 5, United States Code, for  
20   persons in the Government service employed intermittently.

21                (3) The Council may engage such technical assistance  
22   from individuals skilled in medical and other aspects of dis-  
23   ability as may be necessary to carry out its functions. The  
24   Secretary shall make available to the Council such secretari-  
25   al, clerical, and other assistance and any pertinent data pre-

1   pared by the Department of Health and Human Services as  
2   the Council may require to carry out its functions.

3       (c) It shall be the function of the Council to provide  
4   advice and recommendations to the Secretary of Health and  
5   Human Services on disability standards, policies, and proce-  
6   dures under titles II and XVI of the Social Security Act,  
7   including advice and recommendations with respect to—

8           (1) the revisions to be made by the Secretary,  
9       under section 911(a) of this Act, in the criteria em-  
10      bodied under the category “Mental Disorders” in the  
11      “Listing of Impairments”; and

12           (2) the question of requiring, in cases involving  
13      impairments other than mental impairments, that the  
14      medical portion of each case review (as well as any ap-  
15      plicable assessment of residual functional capacity) be  
16      completed by an appropriate medical specialist em-  
17      ployed by the State agency before any determination  
18      can be made with respect to the impairment involved.

19   The Council shall also have the functions and responsibilities  
20   (with respect to work evaluations in the case of applicants for  
21   and recipients of benefits based on disability under title XVI)  
22   which are set forth in section 927 of this Act.

23       (d) Whenever the Council deems it necessary or desir-  
24   able to obtain assistance in order to perform its functions  
25   under this section, the Council may—

1           (1) call together larger groups of experts, includ-  
2           ing representatives of appropriate professional and con-  
3           sumer organizations, in order to obtain a broad expres-  
4           sion of views on the issues involved; and

5           (2) establish temporary short-term task forces of  
6           experts to consider and comment upon specialized  
7           issues.

8           (e)(1) Any advice and recommendations provided by the  
9           Council to the Secretary of Health and Human Services shall  
10          be included in the ensuing annual report made by the Secre-  
11          tary to Congress under section 704 of the Social Security  
12          Act.

13          (2) Section 704 of the Social Security Act is amended  
14          by inserting after the first sentence the following new sen-  
15          tence: "Each such report shall contain a comprehensive de-  
16          scription of the current status of the disability insurance pro-  
17          gram under title II and the program of benefits for the blind  
18          and disabled under title XVI (including, in the case of the  
19          reports made in 1984, 1985, and 1986, any advice and rec-  
20          ommendations provided to the Secretary by the Advisory  
21          Council on the Medical Aspects of Disability, with respect to  
22          disability standards, policies, and procedures, during the pre-  
23          ceding year).".

24          (f) The Council shall cease to exist at the close of De-  
25          cember 31, 1985.

1 SEC. 925. QUALIFYING EXPERIENCE FOR APPOINTMENT OF  
2 CERTAIN STAFF ATTORNEYS TO ADMINISTRA-  
3 TIVE LAW JUDGE POSITIONS.

4 (a)(1) The Secretary of Health and Human Services  
5 shall, within 180 days after the date of the enactment of this  
6 Act, establish a sufficient number of attorney adviser posi-  
7 tions at grades GS-13 and GS-14 in the Department of  
8 Health and Human Services to ensure adequate opportunity  
9 for career advancement for attorneys employed by the Social  
10 Security Administration in the process of adjudicating claims  
11 under section 205(b), 221(d), or 1631(c) of the Social Secu-  
12 rity Act. In assigning duties and responsibilities to such a  
13 position, the Secretary shall assign duties and responsibilities  
14 to enable an individual serving in such a position to achieve  
15 qualifying experience for appointment by the Secretary for  
16 the position of administrative law judge under section 3105  
17 of title 5, United States Code.

18 (b) The Secretary of Health and Human Services  
19 shall—

20 (1) within 90 days after the date of the enactment  
21 of this Act, submit an interim report to the Committee  
22 on Ways and Means of the House of Representatives  
23 and the Committee on Finance of the Senate on the  
24 Secretary's progress in meeting the requirements of  
25 subsection (a), and

(2) within 180 days after the date of the enactment of this Act, submit a final report to such committees setting forth specifically the manner and extent to which the Secretary has complied with the requirements of subsection (a).

**SEC. 926. SSI BENEFITS FOR INDIVIDUALS WHO PERFORM  
SUBSTANTIAL GAINFUL ACTIVITY DESPITE  
SEVERE MEDICAL IMPAIRMENT.**

(a) Section 201(d) of the Social Security Disability Amendments of 1980 is amended by striking out "shall remain in effect only for a period of three years after such effective date" and inserting in lieu thereof "shall remain in effect only through June 30, 1986".

(b) Section 1619 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(c) The Secretary of Health and Human Services and the Secretary of Education shall jointly develop and disseminate information, and establish training programs for staff personnel, with respect to the potential availability of benefits and services for disabled individuals under the provisions of this section. The Secretary of Health and Human Services shall provide such information to individuals who are applicants for and recipients of benefits based on disability under this title and shall conduct such programs for the staffs of the District offices of the Social Security Administration. The



1 Secretary of Education shall conduct such programs for the  
 2 staffs of the State Vocational Rehabilitation agencies, and in  
 3 cooperation with such agencies shall also provide such infor-  
 4 mation to other appropriate individuals and to public and pri-  
 5 vate organizations and agencies which are concerned with  
 6 rehabilitation and social services or which represent the  
 7 disabled.”.

8 **SEC. 927. ADDITIONAL FUNCTIONS OF ADVISORY COUNCIL;**  
 9 **WORK EVALUATIONS IN CASE OF APPLICANTS**  
 10 **FOR AND RECIPIENTS OF SSI BENEFITS BASED**  
 11 **ON DISABILITY.**

12 The functions and responsibilities of the Advisory Coun-  
 13 cil on the Medical Aspects of Disability (established by sec-  
 14 tion 924 of this Act) shall include—

15 (1) a consideration of alternative approaches to  
 16 work evaluation in the case of applicants for benefits  
 17 based on disability under title XVI and recipients of  
 18 such benefits undergoing reviews of their cases, includ-  
 19 ing immediate referral of any such applicant or recipi-  
 20 ent to a vocational rehabilitation agency for services at  
 21 the same time he or she is referred to the appropriate  
 22 State agency for a disability determination;

23 (2) an examination of the feasibility and appropri-  
 24 ateness of providing work evaluation stipends for appli-  
 25 cants for and recipients of benefits based on disability

1 under title XVI in cases where extended work evalua-  
2 tion is needed prior to the final determination of their  
3 eligibility for such benefits or for further rehabilitation  
4 and related services;

5 (3) a review of the standards, policies, and proce-  
6 dures which are applied or used by the Secretary of  
7 Health and Human Services with respect to work eval-  
8 uations, in order to determine whether such standards,  
9 policies, and procedures will provide appropriate  
10 screening criteria for work evaluation referrals in the  
11 case of applicants for and recipients of benefits based  
12 on disability under title XVI; and

13 (4) an examination of possible criteria for assess-  
14 ing the probability that an applicant for or recipient of  
15 benefits based on disability under title XVI will benefit  
16 from rehabilitation services, taking into consideration  
17 not only whether the individual involved will be able  
18 after rehabilitation to engage in substantial gainful ac-  
19 tivity but also whether rehabilitation services can rea-  
20 sonably be expected to improve the individual's func-  
21 tioning so that he or she will be able to live independ-  
22 ently or work in a sheltered environment.

23 For purposes of this section, "work evaluation" includes  
24 (with respect to any individual) a determination of (A) such  
25 individual's skills, (B) the work activities or types of work

1 activity for which such individual's skills are insufficient or  
 2 inadequate, (C) the work activities or types of work activity  
 3 for which such individual might potentially be trained or re-  
 4 habilitated, (D) the length of time for which such individual is  
 5 capable of sustaining work (including, in the case of the men-  
 6 tally impaired, the ability to cope with the stress of competi-  
 7 tive work), and (E) any modifications which may be neces-  
 8 sary, in work activities for which such individual might be  
 9 trained or rehabilitated, in order to enable him or her to per-  
 10 form such activities.

11 **SEC. 928. EFFECTIVE DATE.**

12 Except as otherwise provided in this title, the amend-  
 13 ments made by this title shall apply only with respect to  
 14 cases involving disability determinations pending in the De-  
 15 partment of Health and Human Services or in court on the  
 16 date of the enactment of this Act, or initiated on or after such  
 17 date.

18 **TITLE X—MEDICARE BUDGET**  
 19 **RECONCILIATION AMENDMENTS**

20 **SHORT TITLE; TABLE OF CONTENTS**

21 **SEC. 1000.** This title may be cited as the "Medicare  
 22 Budget Reconciliation Amendments of 1984".

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#### 1 PART A—PAYMENT- AND COVERAGE-RELATED CHANGES

##### 2 PAYMENT FOR OUTPATIENT DIAGNOSTIC LABORATORY

##### 3 TESTS

4 SEC. 1001. (a) Subsection (a) of section 1833 of the  
 5 Social Security Act (42 U.S.C. 13951) is amended—

6 (1) by amending clause (D) of subsection (a)(1) to  
 7 read as follows: "(D) with respect to diagnostic labora-  
 8 tory tests for which payment is made under this part,  
 9 the amounts paid shall be equal to 80 percent (or 100

1 percent, in the case of such tests for which payment is  
2 made on the basis of an assignment described in sec-  
3 tion 1842(b)(3)(B)(ii) or under the procedure described  
4 in section 1870(f)(1)) of the lesser of (i) the amount de-  
5 termined under subsection (h), or (ii) the amount of the  
6 charges billed for the tests;”;

7 (2) by inserting “or (D)” in paragraph (2)(B) after  
8 “subparagraph (C)”;

9 (3) by striking out “and” at the end of paragraph  
10 (2)(B);

11 (4) by inserting “and” at the end of paragraph  
12 (2)(C); and

13 (5) by adding at the end of paragraph (2) the fol-  
14 lowing new subparagraph:

15 “(D) with respect to diagnostic laboratory  
16 tests for which payment is made under this part,  
17 100 percent of the lesser of (i) the amount deter-  
18 mined under subsection (h), or (ii) the amount of  
19 the charges billed for the tests;”.

20 (b) Subsection (b) of such section is amended—

21 (1) by striking out “and” at the end of clause (2)  
22 of subsection (b); and

23 (2) by inserting before the period at the end of the  
24 first sentence of subsection (b) the following: “, and (4)  
25 such deductible shall not apply with respect to diagnos-



1       tic laboratory tests for which payment is made under  
2       this part on the basis of an assignment described in  
3       section 1842(b)(3)(B)(ii), under the procedure described  
4       in section 1870(f)(1), or to a provider of services with  
5       an agreement in effect under section 1866”.

6       (c) Subsection (h) of such section is amended to read as  
7 follows:

8       “(h)(1) The Secretary shall establish in accordance with  
9 this subsection a national fee schedule for diagnostic labora-  
10 tory tests for which payment is made under this part.

11       “(2) Except as provided in paragraph (4), the Secretary  
12 shall set the fee schedule at 60 percent of the prevailing  
13 charge level determined pursuant to the third and fourth sen-  
14 tences of section 1842(b)(3) for similar diagnostic laboratory  
15 tests for the 12-month period beginning July 1, 1984, adjust-  
16 ed annually to reflect changes in the Consumer Price Index  
17 for All Urban Consumers (United States city average) and  
18 subject to such other adjustments as the Secretary deter-  
19 mines are justified by technological changes.

20       “(3) In addition to the amounts provided under the fee  
21 schedule, the Secretary shall provide for and establish a  
22 nominal fee to cover the costs in collecting the sample on a  
23 diagnostic laboratory test that was performed and for which  
24 payment is made under this part, except that not more than

1 one such fee may be provided under this paragraph with re-  
2 spect to samples collected in the same encounter.

3 “(4)(A) During the 3-year period beginning July 1,  
4 1984, the Secretary may provide for the fee schedule under  
5 this subsection to be established on a regional or statewide  
6 basis if the Secretary determines that a national fee schedule  
7 is inappropriate at such time because of limitations in the  
8 data available to establish such a schedule.

9 “(B) In establishing a fee schedule under this subsec-  
10 tion, the Secretary may provide for an adjustment to take  
11 into account, with respect to the portion of the expenses of  
12 diagnostic laboratory tests attributable to wages, the relative  
13 difference between a region’s or local area’s wage rates and  
14 the wage rate presumed in the data on which the schedule is  
15 based.

16 “(5) In the case of a bill or request for payment for a  
17 diagnostic laboratory test for which payment may otherwise  
18 be made under this part—

19 “(A) no payment may be made under this part to  
20 a physician with respect to such test unless the physi-  
21 cian (or another physician with whom the physician  
22 shares his practice) personally performed or supervised  
23 the performance of the test, and

24 “(B) payment for such a test performed by a labo-  
25 ratory which is independent of a physician’s office or a

1 rural health clinic may only be made on the basis of an  
 2 assignment described in section 1842(b)(3)(B)(ii), under  
 3 the procedure described in section 1870(f)(1), or to a  
 4 provider of services with an agreement in effect under  
 5 section 1866.”.

6 (d) Section 1842(h) of such Act (42 U.S.C. 1395u(h)) is  
 7 repealed.

8 (e) The last sentence of section 1866(a)(2)(A) of such  
 9 Act (42 U.S.C. 1395cc(a)(2)(A)) is amended by inserting  
 10 “and with respect to diagnostic laboratory tests” after “sec-  
 11 tion 1861(s)(10)”.

12 (f) The Secretary of Health and Human Services (here-  
 13 inafter in this title referred to as the “Secretary”) shall sim-  
 14 plify the procedures under section 1842 of the Social Secu-  
 15 rity Act with respect to claims and payments for diagnostic  
 16 laboratory tests under part B of title XVIII of such Act.

17 (g) The amendments and repeal made by this section  
 18 shall apply to diagnostic laboratory tests furnished on or after  
 19 July 1, 1984.

#### 20 COVERAGE OF ADMINISTRATION OF HEPATITIS B VACCINE

21 SEC. 1002. (a) Section 1861(s)(10) of the Social Secu-  
 22 rity Act (42 U.S.C. 1395x(s)(10)) is amended—

23 (1) by inserting “(A)” after “(10)”,

24 (2) by striking out the period at the end and in-  
 25 serting in lieu thereof “; and”, and

1           (3) by adding at the end the following new sub-  
2       paragraph:

3           “(B) hepatitis B vaccine and its administration,  
4       furnished in a hospital or a renal dialysis facility.”.

5       (b) Section 1833 of such Act (42 U.S.C. 13951) is  
6       amended by adding at the end the following new subsection:

7       “(k) With respect to services described in section  
8       1861(s)(10)(B), the Secretary may provide, instead of the  
9       amount of payment otherwise provided under this part, for  
10      payment of such an amount or amounts as reasonably reflects  
11      the general cost of efficiently providing such services.”.

12      (c) The amendments made by this section apply to serv-  
13      ices furnished on or after July 1, 1984.

14      PACEMAKER REIMBURSEMENT REVIEW AND REFORM

15      SEC. 1003. (a)(1) The Secretary shall issue revisions to  
16      the current guidelines for the payment under part B of title  
17      XVIII of the Social Security Act for the transtelephonic  
18      monitoring of cardiac pacemakers. Such revised guidelines  
19      shall include provisions regarding the specifications for and  
20      frequency of transtelephonic monitoring procedures which  
21      will be found to be reasonable and necessary.

22      (2)(A) Except as provided in subparagraph (B), if the  
23      guidelines required by paragraph (1) have not been issued  
24      and put into effect by October 1, 1984, payment may not be  
25      made under part B of title XVIII of the Social Security Act

1 for transtelephonic monitoring procedures (with respect to a  
2 single-chamber cardiac pacemaker powered by lithium batter-  
3 ies) conducted more frequently than—

4 (i) weekly during the first month after implanta-  
5 tion,

6 (ii) once every 2 months during the period repre-  
7 senting 80 percent of the estimated life of the implant-  
8 ed device, and

9 (iii) monthly thereafter.

10 (B) Subparagraph (A) shall only apply to the monitoring  
11 of single-chamber cardiac pacemaker devices powered by  
12 lithium batteries, and shall not apply in cases where the Sec-  
13 retary (or the Secretary's agent) determines that special  
14 medical factors (including possible evidence of pacemaker  
15 malfunction) justify more frequent transtelephonic monitoring  
16 procedures.

17 (b)(1) The Secretary shall review, and report to the  
18 Committees on Energy and Commerce and Ways and Means  
19 of the House of Representatives and the Committee on Fi-  
20 nance of the Senate, regarding the appropriateness of the  
21 current rate of reimbursement under part B of title XVIII of  
22 the Social Security Act for physicians' services associated  
23 with implantation or replacement of pacemaker devices and  
24 pacemaker leads. Such review shall take into account the  
25 amounts recognized as reasonable with respect to such proce-



1 dures and the time and difficulty of such procedures at the  
2 current time in comparison with such amounts and the time  
3 and difficulty of such procedures at the time the rates for  
4 such procedures were first established under such part. In  
5 making such review and report, the Secretary shall take into  
6 consideration the reduction of such recognized rates by 20  
7 percent.

8 (2) The Secretary shall complete the review described in  
9 this subsection not later than October 1, 1984.

10 (c) Section 1866 of the Social Security Act (42 U.S.C.  
11 1395cc) is amended by adding at the end thereof the follow-  
12 ing new subsection:

13 “(g)(1) The Secretary shall, through the Commissioner  
14 of the Food and Drug Administration, provide for a registry  
15 of all cardiac pacemaker devices and pacemaker leads for  
16 which payment was made under this title. Such registry shall  
17 include the manufacturer, model, serial number, and manu-  
18 facturer’s price of each such device or lead, the name of the  
19 recipient of such device or lead, the date and location of the  
20 implantation or removal of the device or lead, the name of  
21 the physician involved in implanting or removing such device  
22 or lead, the name of the hospital or other provider billing for  
23 such procedure, any express or implied warranties associated  
24 with such device or lead under contract or State law, and  
25 such other information as the Secretary deems to be appro-

1 priate. Such registry shall be for the purposes of assisting the  
2 Secretary in determining when payments may properly be  
3 made under this title, determining when inspection by the  
4 Food and Drug Administration may be necessary under para-  
5 graph (2), and carrying out studies with respect to the use of  
6 such devices and leads. In carrying out any such study, the  
7 Secretary may not reveal any specific information which  
8 identifies any pacemaker device or lead recipient by name (or  
9 which would otherwise identify a specific recipient). Any  
10 person or organization may provide information to the regis-  
11 try with respect to cardiac pacemaker devices and leads other  
12 than those for which payment is made under this title.

13       “(2) In any case where the Secretary has reason to be-  
14 lieve, based upon information in the pacemaker registry or  
15 otherwise available to him, that replacement of a cardiac  
16 pacemaker device or lead for which payment is or may be  
17 requested under this title is related to the malfunction of a  
18 device or lead, the Secretary may require that personnel of  
19 the Food and Drug Administration test such device, or be  
20 present at the testing of such device by the manufacturer, to  
21 determine whether such device was functioning properly.”.

22       PAYMENT FOR DEBRIDEMENT OF MYCOTIC TOENAILS

23       SEC. 1004. The Secretary shall provide, pursuant to  
24 section 1862(a) of the Social Security Act, that payment will  
25 not be made under part B of title XVIII of such Act for a

1 physician's debridement of mycotic toenails to the extent  
2 such debridement is performed for a patient more frequently  
3 than once every 60 days, unless the medical necessity for  
4 more frequent treatment is documented by the billing  
5 physician.

6       PAYMENT FOR COSTS OF HOSPITAL-BASED MOBILE  
7                   INTENSIVE CARE UNITS

8       SEC. 1005. (a)(1) In the case of a project or system  
9 described in subsection (b), the Secretary shall provide,  
10 except as provided in paragraph (2), that the amount of pay-  
11 ments to hospitals covered under the project or system (on  
12 and after January 1, 1983) shall include payments for their  
13 operation of hospital-based mobile intensive care units (as de-  
14 fined by State statute) if the State provides satisfactory as-  
15 surances that the total amount of payments to such hospitals  
16 under titles XVIII and XIX of the Social Security Act under  
17 the demonstration project or system (including any such addi-  
18 tional amount of payment) would not exceed the total amount  
19 of payments which would have been paid under such titles if  
20 the demonstration project or system were not in effect.

21       (2) Paragraph (1) shall not apply if the State in which  
22 the project or system is located notifies the Secretary—

23               (A) within 30 days of the date of the enactment of  
24       this section, in the case of a demonstration project de-  
25       scribed in subsection (b)(1), or

1 (B) within a reasonable period (established by the  
 2 Secretary), in the case of a system described in subsec-  
 3 tion (b)(2),  
 4 that the State does not want paragraph (1) to apply to that  
 5 project or system.

6 (b) A project or system referred to in subsection (a) is—

7 (1) a statewide demonstration project under sec-  
 8 tion 222(a) of the Social Security Amendments of 1972  
 9 (Public Law 92-603), or

10 (2) a statewide hospital reimbursement control  
 11 system approved under section 1886(c) of the Social  
 12 Security Act,

13 which project or system provides for payments to hospitals in  
 14 a State determined on a prospective basis and related to a  
 15 classification of patients by diagnosis-related groups.

16 (c) Payment for services described in this section shall  
 17 be considered to be payments for services under part A of  
 18 title XVIII of the Social Security Act.

19 *PAYMENT FOR PHYSICIANS' SERVICES FURNISHED TO*  
 20 *HOSPITAL INPATIENTS*

21 *SEC. 1006. (a) Subsection (b) of section 1842 of the*  
 22 *Social Security Act (42 U.S.C. 1395u) is amended by*  
 23 *redesignating paragraphs (4) through (6) as paragraphs (5)*  
 24 *through (7), respectively, and by inserting after paragraph*  
 25 *(3) the following new paragraph:*

1       “(4)(A) In determining the prevailing charge levels  
 2 under the third and fourth sentences of paragraph (3) for  
 3 physicians’ services furnished to inpatients of a hospital, the  
 4 Secretary shall not set any level higher than the same level as  
 5 was set for the period ending June 30, 1984, in the case of  
 6 the twelve-month period ending June 30, 1985.

7       “(B) In determining the prevailing charge levels under  
 8 the third and fourth sentences of paragraph (3) for physi-  
 9 cians’ services furnished to inpatients of a hospital for peri-  
 10 ods beginning after June 30, 1985, the Secretary shall treat  
 11 the levels as set under subparagraph (A) as having fully pro-  
 12 vided for economic changes which would have been taken into  
 13 account but for the limitations contained in subparagraph  
 14 (A).”.

15       (b)(1) Section 1866(a)(1) of such Act (42 U.S.C.  
 16 1395cc(a)(1)) is amended by striking out “Any provider”  
 17 and inserting in lieu thereof “Subject to paragraph (4), any  
 18 provider”.

19       (2) Section 1866(a) of such Act is further amended by  
 20 inserting at the end the following new paragraph:

21       “(4)(A) A hospital shall be qualified to participate  
 22 under this title and shall be eligible for payments under this  
 23 title only if it provides (in the agreement filed with the Secre-  
 24 tary under paragraph (1)) that any physician who—



1           “(i) is on the medical staff of the hospital (courte-  
2           sy or otherwise) and

3           “(ii) furnishes services to inpatients in the hospi-  
4           tal,

5           must enter into an agreement described in subparagraph (B)  
6           in a manner established by the Secretary.

7           “(B) A physician’s agreement referred to in subpara-  
8           graph (A) is an agreement by the physician not to impose  
9           any charge or receive payment for any services which are  
10          furnished to any inpatient in the hospital for which payment  
11          may be made under part B except on the basis of an assign-  
12          ment in section 1842(b)(3)(B)(ii) or under the procedure de-  
13          scribed in section 1870(f)(1).”.

14          (3) Section 1866(b)(2) of such Act is amended by in-  
15          serting before the period at the end thereof the following: “, or  
16          (H) that such provider (in the case of a hospital) is not com-  
17          plying with the provisions of the agreement specified in sub-  
18          section (a)(4)”.

19          (c)(1) The amendments made by subsection (a) shall be  
20          effective with respect to items and services furnished on or  
21          after July 1, 1984.

22          (2) The amendments made by subsection (b) shall only  
23          apply to physicians’ services furnished during the period be-  
24          ginning on July 1, 1984, and ending six months after the  
25          date the Congress receives the report of the Secretary of

1 *Health and Human Services under section 603(a)(2)(B) of*  
 2 *the Social Security Amendments of 1983 (relating to a*  
 3 *report on including payment for physicians' services to hospi-*  
 4 *tal inpatients in the DRG-based payment amount to hospi-*  
 5 *tals).*

6 (3) *The Secretary of Health and Human Services shall*  
 7 *provide for notice to individuals enrolled (or enrolling) under*  
 8 *the supplementary medical insurance program under part B*  
 9 *of title XVIII of the Social Security Act of the amendments*  
 10 *made by subsection (b).*

11 PART B—MISCELLANEOUS ADMINISTRATIVE CHANGES  
 12 PRESIDENTIAL APPOINTMENT OF AND PAY LEVEL FOR  
 13 THE ADMINISTRATOR OF THE HEALTH CARE FINANC-  
 14 ING ADMINISTRATION

15 SEC. 1021. (a) Title XI of the Social Security Act is  
 16 amended by inserting after section 1116 the following new  
 17 section:

18 “APPOINTMENT OF THE ADMINISTRATOR OF THE HEALTH  
 19 CARE FINANCING ADMINISTRATION

20 “SEC. 1117. The Administrator of the Health Care Fi-  
 21 nancing Administration shall be appointed by the President  
 22 by and with the advice and consent of the Senate.”.

23 (b) Section 5315 of title 5, United States Code, is  
 24 amended by adding at the end thereof the following:

1           “Administrator of the Health Care Financing Ad-  
2           ministration.”.

3           (c) The amendments made by this section shall apply to  
4           appointments made after the date of the enactment of this  
5           Act.

6           PERMITTING LIMITED PROVIDER REPRESENTATION ON  
7           PEER REVIEW ORGANIZATIONS

8           SEC. 1022. Section 1153(b)(3) of the Social Security  
9           Act (42 U.S.C. 1320c-2(b)(3)) is amended—

10           (1) by striking out “(3) The Secretary” and in-  
11           serting in lieu thereof “(3)(A) Except as provided in  
12           subparagraph (B), the Secretary”, and

13           (2) by adding at the end the following new sub-  
14           paragraph:

15           “(B) In the case of a utilization and quality control peer  
16           review organization with a governing board composed of—

17           “(i) not more than 15 members, the Secretary  
18           may enter into a contract under this part with the or-  
19           ganization if not more than one of the members of its  
20           governing board is a member of a governing board, of-  
21           ficer, or managing employee of a health care facility,  
22           or

23           “(ii) more than 15 members, the Secretary may  
24           enter into a contract under this part with the organiza-  
25           tion if not more than two of the members of its govern-

1       ing board are members of a governing board, officer, or  
2       managing employee of a health care facility.”.

3                   ACCESS TO HOME HEALTH SERVICES

4       SEC. 1023. (a) Sections 1814(a) and 1835(a) of the  
5       Social Security Act (42 U.S.C. 1395f(a), 1395n(a)) are each  
6       amended by adding at the end the following new sentence:  
7       “For purposes of the preceding sentence, service by a physi-  
8       cian as an uncompensated officer or director of a home health  
9       agency shall not constitute having a significant ownership in-  
10      terest in, or a significant financial or contractual relationship  
11      with, such agency.”.

12       (b) The third sentence of section 1814(a) of the Social  
13      Security Act (42 U.S.C. 1395f(a)) and the fourth sentence of  
14      section 1835(a) of such Act (42 U.S.C. 1395n(a)) are each  
15      amended by inserting before the period at the end the follow-  
16      ing: “, except that such prohibition shall not apply with re-  
17      spect to a home health agency which is a sole community  
18      home health agency (as determined by the Secretary)”.

19       (c)(1) The amendments made by subsection (a) shall  
20      apply to certifications and plans of care made or established  
21      on or after the date of the enactment of this Act.

22       (2) The Secretary shall provide, not later than 90 days  
23      after the date of the enactment of this Act, for such revision  
24      of regulations as may be required to reflect the amendments  
25      made by subsection (b).

## 1 REPEAL OF SPECIAL TUBERCULOSIS TREATMENT

## 2 REQUIREMENTS

3 SEC. 1024. (a) Section 1814(a) of the Social Security  
4 Act (42 U.S.C. 1395f(a)) is amended—

5 (1) by striking out subparagraph (B) of paragraph  
6 (2),

7 (2) by striking out “and inpatient tuberculosis hos-  
8 pital services” in paragraph (3),

9 (3) by striking out paragraph (5), and

10 (4) by striking out “(B),” in the sentence that fol-  
11 lows paragraph (8).

12 (b) Section 1861 of such Act (42 U.S.C. 1395x) is  
13 amended—

14 (1) by striking out subsections (d) and (g),

15 (2) by striking out “or tuberculosis unless it is a  
16 tuberculosis hospital (as defined in subsection (g)) or”  
17 in the fifth sentence of subsection (e), and

18 (3) by striking out “or tuberculosis” in the first  
19 sentence of subsection (j) following paragraph (15).

20 (c) Section 1863 of such Act (42 U.S.C. 1395z) is  
21 amended by striking out “(g)(4),”.

22 (d) Section 1866 of such Act (42 U.S.C. 1395cc) is  
23 amended—

24 (1) by striking out “tuberculosis hospital services  
25 and” in subsection (b)(3), and



1           (2) by striking out “inpatient tuberculosis hospital  
2       services and” in subsection (d).

3       INDIRECT PAYMENT OF SUPPLEMENTARY MEDICAL

4                       INSURANCE BENEFITS

5       SEC. 1025. (a) The first sentence of section 1842(b)(5)  
6 of the Social Security Act (42 U.S.C. 1395u(b)(5)) is  
7 amended—

8           (1) by inserting “(i)” after “(A)”,

9           (2) by striking out “(B)” and inserting in lieu  
10       thereof “(ii)”, and

11          (3) by inserting before the period the following:  
12       “, or (B) to an entity (i) which provides coverage of  
13       the services under a health benefits plan, but only to  
14       the extent that payment is not made under this part,  
15       (ii) which has paid the person who provided the service  
16       an amount (including the amount payable under this  
17       part) which that person has accepted as payment in full  
18       for the service, and (iii) to which the individual has  
19       agreed in writing that payment may be made under  
20       this part”.

21       (b) The second sentence of such section is amended by  
22       striking out “or (B)”.

1 INCLUDING PODIATRISTS IN DEFINITION OF "PHYSICIAN"  
2 FOR OUTPATIENT PHYSICAL THERAPY SERVICES AND  
3 INCLUDING PODIATRISTS AND DENTISTS IN DEFINI-  
4 TION OF "PHYSICIAN" FOR OUTPATIENT AMBULA-  
5 TORY SURGERY

6 SEC. 1026. (a) Section 1861(p)(1) of the Social Security  
7 Act (42 U.S.C. 1395x(p)(1)) is amended by striking out "sec-  
8 tion 1861(r)(1)" and inserting in lieu thereof "paragraph (1)  
9 or (3) of section 1861(r)".

10 (b) Section 1832(a)(2)(F)(ii) of such Act (42 U.S.C.  
11 1395k(a)(2)(F)(ii)) is amended by striking out "section  
12 1861(r)(1)" and inserting in lieu thereof "paragraph (1), (2),  
13 or (3) of section 1861(r)".

14 (c) Section 1861(r)(3) of such Act (42 U.S.C.  
15 1395x(r)(3)) is amended—

16 (1) by striking out "and (m)" the first place it ap-  
17 pears and inserting in lieu thereof ", (m), and (p)(1)",  
18 and

19 (2) by inserting ", 1832(a)(2)(F)(ii)," after  
20 "1814(a)" the first place it appears.

21 (d) The amendments made by this section apply to serv-  
22 ices furnished on or after the date of enactment of this Act.

SEC. 1027. (a) Section 1861(p)(2) of the Social Security Act (42 U.S.C. 1395x(p)(2)) is amended by striking out “, and is periodically reviewed, by a physician (as so defined)” and inserting in lieu thereof “by a physician (as so defined) or by a qualified physical therapist and is periodically reviewed by a physician (as so defined)”.

(b) Section 1835(a)(2)(C)(ii) of such Act (42 U.S.C. 1395n(a)(2)(C)(ii)) is amended by striking out “, and is periodically reviewed, by a physician” and inserting in lieu thereof “by a physician or by the qualified physical therapist provided such services and is periodically reviewed by a physician”.

(c) The amendments made by this section apply to plans of care established on or after the date of the enactment of this Act.

18 ACCESS TO RECORDS OF SUBCONTRACTORS

SEC. 1028. (a) Section 1861(v)(1)(I) of the Social Security Act (42 U.S.C. 1395x(v)(1)(I)) is amended by striking out “\$10,000” and inserting in lieu thereof “\$50,000”.

(b) The amendment made by subsection (a) applies to contracts with subcontractors entered into on or after the date of the enactment of this Act.

## 1    MEDICARE RECOVERY AGAINST CERTAIN THIRD PARTIES

2        SEC. 1029. (a) Section 1862(b)(1) of the Social Security  
3 Act (42 U.S.C. 1395y(b)(1)) is amended—

4            (1) in the first sentence, by inserting “promptly”  
5 after “to be made”,

6            (2) in the second sentence, by inserting “or may  
7 be” after “has been”, and

8            (3) by inserting after the second sentence the fol-  
9 lowing new sentence: “The United States may recover  
10 the amount of any such payment under this title by  
11 bringing an action against the entity responsible for  
12 payment under such a law, policy, plan, or insurance  
13 (if the entity would be required to make payment if an  
14 appropriate claim were pursued, but only to the extent  
15 that the entity has not already made payment), by  
16 bringing an action against the entity to which payment  
17 has been so made (if the entity is other than the indi-  
18 vidual entitled to benefits under this title), or by joining  
19 or intervening in any action related to the events that  
20 gave rise to the need for the item or service, and shall  
21 be subrogated (to the extent of the payment under this  
22 title) to any right of the individual or any other entity  
23 to payment under such a law, policy, plan, or  
24 insurance.”.

1 (b) Section 1862(b)(2)(B) of such Act (42 U.S.C.  
2 1395y(b)(2)(B)) is amended—

3 (1) in the first sentence, by inserting “or may be”  
4 after “has been”, and

5 (2) by inserting after the first sentence the follow-  
6 ing new sentence: “The United States may recover the  
7 amount of any such payment under this title by bring-  
8 ing an action against the entity responsible for pay-  
9 ment under such a plan (if the entity would be required  
10 to make payment if an appropriate claim were pursued,  
11 but only to the extent that the entity has not already  
12 made payment), by bringing an action against the  
13 entity to which payment has been so made (if the  
14 entity is other than the individual entitled to benefits  
15 under this title), or by joining or intervening in any  
16 action related to the events that gave rise to the need  
17 for the item or service, and shall be subrogated (to the  
18 extent of the payment under this title) to any right of  
19 the individual or any other entity to payment under  
20 such a plan.”.

21 (c) Section 1862(b)(3)(A)(ii) of such Act (42 U.S.C.  
22 1395y(b)(3)(A)(ii)) is amended—

23 (1) in the first sentence, by inserting “or may be”  
24 after “has been”, and



(2) by inserting after the first sentence the following new sentence: "The United States may recover the amount of any such payment under this title by bringing an action against the entity responsible for payment under such a plan (if the entity would be required to make payment if an appropriate claim were pursued, but only to the extent that the entity has not already made payment), by bringing an action against the entity to which payment has been so made (if the entity is other than the individual entitled to benefits under this title), or by joining or intervening in any action related to the events that gave rise to the need for the item or service, and shall be subrogated (to the extent of the payment under this title) to any right of the individual or any other entity to payment under such a plan."

USE OF ACCREDITING ORGANIZATIONS FOR CERTAIN  
ENTITIES FURNISHING SERVICES

SEC. 1030. The third sentence of section 1865(a) of the Social Security Act (42 U.S.C. 1395bb(a)) is amended—

(1) by striking out "section 1861(e), (j), (o), or (dd)" and inserting in lieu thereof "section 1832(a)(2)(F)(i), 1861(e), 1861(f), 1861(j), 1861(o), or 1861(p)(4)(A) or (B), paragraphs (11) and (12) of sec-

1       tion 1861(s), or section 1861(aa)(2), 1861(cc)(2), or  
2       1861(dd)(2)”, and

3               (2) by striking out “institution or agency” each  
4       place it appears and inserting in lieu thereof “entity”.

5       CONFIDENTIALITY OF ACCREDITATION SURVEYS

6       SEC. 1031. Section 1865(a) of the Social Security Act  
7       (42 U.S.C. 1395bb(a)) is amended—

8               (1) by striking out “(on a confidential basis)” in  
9       paragraph (2), and

10              (2) by adding at the end the following new  
11       sentence:

12       “The Secretary may not disclose any accreditation survey  
13       made and released to him by the Joint Commission on Ac-  
14       creditation of Hospitals, the American Osteopathic Associ-  
15       ation, or any other national accreditation body, of an entity  
16       accredited by such body.”.

17       THIRTY-DAY COVERAGE FOR SERVICES FURNISHED BY A  
18       HOME HEALTH AGENCY WHOSE AGREEMENT HAS  
19       BEEN TERMINATED

20       SEC. 1032. (a) Section 1866(b)(4)(B) of the Social Secu-  
21       rity Act (42 U.S.C. 1395cc(b)(4)(B)) is amended by striking  
22       out “the calendar year in which” and inserting in lieu thereof  
23       “30 days after”.

1 (b) The amendment made by subsection (a) applies with  
2 respect to terminations whose effective date falls after 60  
3 days after the date of the enactment of this Act.

4 TERMINATION OF AGREEMENTS WITH INSTITUTIONS AND  
5 ENTITIES WHERE OWNERS OR CERTAIN OTHER INDIVIDUALS  
6 HAVE BEEN CONVICTED OF CERTAIN  
7 OFFENSES

8 SEC. 1033. Section 1866(b)(2)(G) of the Social Security  
9 Act (42 U.S.C. 1395cc(b)(2)(G)) is amended by inserting “,  
10 or that any person who has a direct or indirect ownership or  
11 control interest of 5 percent or more in such provider, or who  
12 is an officer, director, agent, or managing employee (as de-  
13 fined in section 1126(b)) of such provider, is a person de-  
14 scribed in section 1126(a)(2)” after “1126(a)”.

15 ELIMINATION OF HEALTH INSURANCE BENEFITS  
16 ADVISORY COUNCIL

17 SEC. 1034. (a) Section 1867 of the Social Security Act  
18 (42 U.S.C. 1395dd) is repealed.

19 (b)(1) The first sentence of section 1863 of such Act (42  
20 U.S.C. 1395z) is amended by striking out “the Health Insur-  
21 ance Benefits Advisory Council established by section 1867,  
22 appropriate State agencies” and inserting in lieu thereof “ap-  
23 propriate State agencies”.

1       (2) The first sentence of section 7(d)(4) of the Railroad  
2 Retirement Act of 1974 (45 U.S.C. 231f(d)(4)) is amended by  
3 striking out "1867,".

4       (3) Section 361 of the Social Security Amendments of  
5 1977 (42 U.S.C. 907a) is amended by striking out subsection  
6 (i).

7 OPEN ENROLLMENT PERIODS FOR HEALTH MAINTENANCE  
8 ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS

9       SEC. 1035. (a) Subsection (c)(3)(A) of section 1876 of  
10 the Social Security Act (42 U.S.C. 1395mm) is amended—

11           (1) by inserting "(i)" after "(3)(A)",

12           (2) by inserting "and including the 30-day period  
13 specified under clause (ii)" after "30 days duration  
14 every year", and

15           (3) by adding at the end the following new clause:

16       "(ii) For each area served by more than one eligible  
17 organization under this section, the Secretary (after consulta-  
18 tion with such organizations) shall establish a single 30-day  
19 period each year during which all eligible organizations serv-  
20 ing the area must provide for open enrollment under this sec-  
21 tion. The Secretary shall determine annual per capita rates  
22 under subsection (a)(1)(A) in a manner that assures that indi-  
23 viduals enrolling during such a 30-day period will not have  
24 premium charges increased or any additional benefits de-  
25 creased during the 12-month enrollment period for which the

1 individual is enrolling. An eligible organization may provide  
2 for such other open enrollment period or periods as it deems  
3 appropriate consistent with this section.”.

4 (b) The Secretary of Health and Human Services may  
5 phase in, over a period of not longer than three years, the  
6 application of the amendments made by subsection (a) to all  
7 applicable areas in the United States if the Secretary deter-  
8 mines that it is not administratively feasible to establish a  
9 single 30-day open enrollment period for all such applicable  
10 areas before the end of the period.

11 DEADLINE FOR REPORT ON INCLUDING PAYMENT FOR  
12 PHYSICIANS’ SERVICES TO HOSPITAL INPATIENTS IN  
13 DRG PAYMENT AMOUNTS

14 SEC. 1036. The second sentence of section 603(a)(2)(B)  
15 of the Social Security Amendments of 1983 (Public Law 98-  
16 21) is amended by striking out “include, in a report to Con-  
17 gress in 1985,” and inserting in lieu thereof “submit to Con-  
18 gress, not later than July 1, 1985, a report to Congress  
19 which includes”.

20 FLEXIBLE SANCTIONS FOR NONCOMPLIANCE WITH RE-  
21 QUIREMENTS FOR END-STAGE RENAL DISEASE  
22 FACILITIES

23 SEC. 1037. Section 1881(c)(3) of the Social Security  
24 Act (42 U.S.C. 1395rr(c)(3)) is amended by adding at the end  
25 the following new sentence: “Where the Secretary also de-



1 terminates that the facility's or provider's failure to cooperate  
2 with the Secretary's plans and goals does not jeopardize pa-  
3 tient health or safety or justify termination of certification,  
4 the Secretary may, instead of terminating or withholding cer-  
5 tification and after reasonable notice to the provider or facili-  
6 ty and to the public, impose such other sanctions as may be  
7 appropriate, which sanctions may include denial of reim-  
8 bursement with respect to some or all patients admitted to  
9 the facility after the date of the notice and graduated reduc-  
10 tion in reimbursement for all patients.".

11 REMOVING COSTS OF NURSE ANESTHETISTS FROM DRG-  
12 BASED PAYMENTS

13 SEC. 1038. (a) The second sentence of section  
14 1886(a)(4) of the Social Security Act (42 U.S.C.  
15 1395ww(a)(4)) is amended by inserting "and costs related to  
16 employment or contracts for the professional services of certi-  
17 fied registered nurse anesthetists" after "capital-related  
18 costs".

19 (b) The second sentence of section 603(a)(2)(B) of the  
20 Social Security Amendments of 1983 (Public Law 98-21) is  
21 amended by inserting "and for services of certified registered  
22 nurse anesthetists" after "physicians' services".

23 (c) The amendment made by subsection (a) shall apply  
24 to payments for cost reporting periods beginning on or after  
25 October 1, 1984, and before October 1, 1986.

## 1 DETERMINATION OF HOSPITAL AREA WAGE INDEX

2 SEC. 1039. (a) Section 1886(d)(3)(E) of the Social Secu-  
3 rity Act (42 U.S.C. 1395ww(d)(3)(E)) is amended by adding  
4 at the end the following new sentence: "The Secretary shall  
5 establish criteria under which, in the case of a hospital that  
6 demonstrates to the Secretary in a current fiscal year that  
7 the adjustment being made under the previous sentence (or  
8 under paragraph (2)(H)) for that hospital's discharges in that  
9 fiscal year does not accurately reflect the wage levels in the  
10 labor market serving the hospital, the Secretary, to the  
11 extent he deems appropriate, shall modify such adjustment  
12 for that hospital for discharges in the subsequent fiscal year  
13 to take into account a difference in payment amounts in that  
14 current fiscal year to the hospital that resulted from such  
15 inaccuracy."

16 (b) The Secretary of Health and Human Services shall  
17 develop, in consultation with the Secretary of Labor and the  
18 Commissioner of the Bureau of Labor Statistics, methods of  
19 refining and improving the adequacy and equity of the area  
20 wage indices used under paragraphs (2)(H) and (3)(E) of sec-  
21 tion 1886(d) of the Social Security Act. The Secretary shall  
22 report to Congress on such developments not later than June  
23 1, 1984.

1 DEFINITION OF BONA FIDE EMERGENCY SERVICES FOR  
 2 PURPOSES OF LIMITATIONS ON PAYMENT FOR HOSPI-  
 3 TAL OUTPATIENT SERVICES

4 SEC. 1040. In the administration of section  
 5 1861(v)(1)(K) of the Social Security Act (42 U.S.C.  
 6 1395x(v)(1)(K)), the Secretary of Health and Human Serv-  
 7 ices shall provide that "bona fide emergency services" shall  
 8 include services provided in a hospital emergency room after  
 9 the onset of a medical condition manifesting itself by symp-  
 10 toms of sufficient severity that the absence of immediate  
 11 medical attention could reasonably be expected, by a prudent  
 12 layperson possessing an average knowledge of health and  
 13 medicine, to result in—

- 14 (1) placing the patient's health in jeopardy,
- 15 (2) serious impairment to bodily functions,
- 16 (3) serious dysfunction of any bodily organ or
- 17 part,
- 18 (4) development or continuance of severe pain.

19 DELAY OF EFFECTIVE DATE FOR SINGLE-RATE FOR  
 20 SKILLED NURSING FACILITIES

21 SEC. 1041. Effective September 30, 1983, section  
 22 102(b) of the Tax Equity and Fiscal Responsibility Act of  
 23 1982 (Public Law 97-248), as amended by section 605 of the  
 24 Social Security Amendments of 1983 (Public Law 98-21), is

1 amended by striking out "October 1, 1983" and inserting in  
2 lieu thereof "April 1, 1984".

## 3 **TITLE XI—TRADE ADJUSTMENT** 4 **ASSISTANCE**

### 5 **SEC. 1101. LIMITATIONS ON TRADE READJUSTMENT ALLOW-** 6 **ANCES.**

7 The first sentence of section 233(a)(3) of the Trade Act  
8 of 1974 (19 U.S.C. 2293(a)(3)) is amended to read as follows:  
9 "Notwithstanding paragraph (1), in order to assist the ad-  
10 versely affected worker to complete training approved for  
11 him under section 236, and in accordance with regulations  
12 prescribed by the Secretary, payments may be made as trade  
13 readjustment allowances for up to 26 additional weeks in the  
14 26-week period that—

15 "(A) follows the last week of entitlement to trade  
16 readjustment allowances otherwise payable under this  
17 chapter; or

18 "(B) begins with the first week of such training, if  
19 such training is approved after the last week described  
20 in subparagraph (A).".

### 21 **SEC. 1102. JOB SEARCH AND RELOCATION ALLOWANCES.**

22 (a) Section 237(a)(1) of the Trade Act of 1974 (19  
23 U.S.C. 2297(a)(1)) is amended by striking out "\$600" and  
24 inserting in lieu thereof "\$800".

## I. LEGISLATIVE BACKGROUND

### Sources of the bill

On March 1, 1984, the Committee on Ways and Means adopted a committee amendment to H.R. 4170 to be offered as a substitute for the previously reported bill. The committee amendment to H.R. 4170 consists of 12 titles. These 12 titles are either from bills previously ordered favorably reported by the committee or certain other provisions ordered favorably reported. Markup by the full committee on these provisions occurred on July 26-27, October 4-6, and October 18-19, 1983, with H.R. 4170 being ordered favorably reported on October 20, 1983, and a committee report filed on October 21, 1983 (H. Rept. No. 98-432). Subcommittee markup dates are indicated below:

The sources of the 12 titles of the committee amendment to H.R. 4170 are as follows:

Title I—Tax Freeze and Tax Reform Generally including Tax-Exempt Entity Leasing Provisions.<sup>1</sup>

Title II—Life Insurance Tax Provisions (H.R. 4065, as amended).

Title III—Revision of Private Foundation Provisions (report and recommendations of the Oversight Subcommittee, with amendments).

Title IV—Tax Simplification Provisions (H.R. 3475, as amended, including H.R. 3592 and H.R. 3593, as amended).

Title V—Fringe Benefit Provisions (H.R. 3525, as amended).

Title VI—Technical Corrections (H.R. 3805, as amended).

Title VII—Tax-Exempt Bond Provisions (including H.R. 2504, as amended).

Title VIII—Miscellaneous Revenue Matters (H.R. 699, H.R. 2476, H.R. 2831, H.R. 3096, and H.R. 3173, as amended, plus additional miscellaneous provisions adopted on November 16, 1983 and February 29 and March 1, 1984).

Title IX—Social Security Disability Benefits (H.R. 3755, as amended).

Title X—Medicare Budget Reconciliation Amendments (recommendations from the Subcommittee on Health, as amended).

Title XI—Trade Adjustment Assistance (certain provisions from (H.R. 3391, as previously reported by the committee and passed by the House).

Title XII—Highway Use and Diesel Fuel Tax changes (adopted in committee markup on March 1, 1984).

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<sup>1</sup> The Tax-exempt entity leasing provisions were in title I of H.R. 4170 as reported, and originally were from H.R. 3110, with amendments. The tax freeze provisions, with amendments, are from Mr. Rostenkowski's proposed floor amendment to H.R. 4170 (printed in the Congressional Record, November 16, 1983). The other tax reform provisions of title I are as a result of committee hearings on February 22 and 28, 1984, on the Treasury Department's proposed tax shelter and other tax reform provisions and related tax provisions considered by the committee.



Committee and subcommittee consideration of H.R. 4170 and committee amendment to H.R. 4170.

***Title I—Tax Freeze and Tax Reform Generally (including Tax-Exempt Entity Leasing Provisions)***

The tax-exempt entity leasing provisions originated from H.R. 3110 as amended and ordered favorably reported by the committee on July 27, 1983. The bill was introduced on May 24, 1983, and the committee held a public hearing on June 8, 1983. The provisions of H.R. 3110 were marked up by the committee on July 26 and 27, 1983.

The tax freeze provisions originated with modifications from a proposed floor amendment to H.R. 4170 by Mr. Rostenkowski (printed in the November 16, 1983 *Congressional Record*). The tax reform provisions of title I are from public hearings on February 22 and 28, 1984, on the Treasury Department's proposed tax shelter and other tax reform proposals, and other committee amendments adopted in markup on February 29 and March 1, 1984.

***Title II—Life Insurance Tax Provisions***

This title originated from H.R. 4065 as amended and ordered favorably reported by the committee on October 5, 1983. The bill was introduced on October 3, 1983, as ordered reported from the Subcommittee on Select Revenue Measures. Subcommittee markup sessions were held on a draft proposal on August 2, 1983 and September 27, 1983. Subcommittee hearings on life insurance tax proposals were held on May 10-11, 1983 and July 28, 1983.

This title was further amended by the committee in markup on February 29 and March 1, 1984.

***Title III—Revision of Private Foundation Provisions***

This title originated from a report and recommendations of the Subcommittee on Oversight. (See Subcommittee Report dated September 28, 1983, WMCP 98-14.) The committee marked up the Subcommittee recommendations on October 5 and 6, 1983. The Subcommittee approved its recommendations on September 14 and 15, 1983. Subcommittee hearings on the tax treatment of private foundations were held on June 27, 28, and 30, and 1983.

This title was further amended by the committee in markup on February 29 and March 1, 1984.

***Title IV—Tax Simplification provisions***

This title originated from H.R. 3475 as amended and ordered favorably reported by the committee on October 4, 1983. H.R. 3475 was introduced on June 30, 1983, and the committee held a public hearing on July 25, 1983.

The title also includes the provisions of H.R. 3592 and H.R. 3593 as ordered favorably reported by the committee on October 4, 1983. A public hearing was held on these bills on September 21, 1983, by the Subcommittee on Select Revenue Measures. The Subcommittee marked up and approved these bills on September 29, 1983.

This title was further amended by the committee in markup on February 29 and March 1, 1984.

### ***Title V—Fringe Benefit Provisions***

This title originated from H.R. 3525 as amended and ordered favorably reported by the committee on October 5, 1983. The bill was introduced on July 12, 1983, and a public hearing was held on August 1, 1983, by the Subcommittee on Select Revenue Measures. The Subcommittee marked up and approved the bill on September 29, 1983.

This title was further amended by the committee in markup on February 29 and March 1, 1984.

### ***Title VI—Technical Corrections***

This title originated from H.R. 3805 as amended and ordered favorably reported by the Committee on October 4, 1983. This bill was introduced on August 4, 1983, and the committee held a public hearing on September 22, 1983.

This title was further amended by the Committee in markup on February 29 and March 1, 1984.

### ***Title VII—Tax-Exempt Bond Provisions***

This title was based generally on the provisions of H.R. 1635 and H.R. 1176, and these provisions as amended were approved and ordered favorably reported by the committee on October 18, 1983. H.R. 1635 was introduced on February 24, 1983, and a public hearing was held by the committee on June 15-16, 1983. H.R. 1176 was introduced on February 2, 1983, and a public hearing was held by the committee on June 15-16, 1983.

The title also includes the provisions of H.R. 2504 as amended and ordered favorably by the committee on October 4, 1983. H.R. 2504 was introduced on April 12, 1983, and a public hearing was held on September 21, 1983, by the Subcommittee on Select Revenue Measures. The Subcommittee marked up the bill and approved it on September 29, 1983.

This title was further amended by the committee in markup on November 16, 1983, and on February 29 and March 1, 1984.

### ***Title VIII—Miscellaneous Revenue Matters***

This title originated in H.R. 4170 from five miscellaneous tax bills (H.R. 699, H.R. 2476, H.R. 2831, H.R. 3096, and H.R. 3173) as amended and ordered favorably reported by the committee on October 4, 1983. These bills were marked up and approved on September 29, 1983, by the Subcommittee on Select Revenue Measures. A public hearing was held by the Subcommittee on September 21, 1983. H.R. 699 was introduced on January 6, 1983; H.R. 2476 was introduced on April 12, 1983; H.R. 2831 was introduced on April 28, 1983; H.R. 3096 was introduced on May 23, 1983; and H.R. 3173 was introduced on May 26, 1983.

Additional miscellaneous committee amendments were adopted in committee markup on November 16, 1983, and on February 29 and March 1, 1984.

### ***Title IX—Social Security Disability Benefits***

This title originated from H.R. 3755 as amended and ordered favorably reported by the committee on September 27, 1983. The bill

was introduced on August 3, 1983, and the Subcommittee on Social Security marked up and approved the bill on August 3, 1983. A public hearing was held on the subject by the Subcommittee on June 30, 1983.

This title was further amended by the committee in markup on February 29, 1984.

### ***Title X—Medicare Budget Reconciliation Amendments***

This title originated from provisions as amended and ordered favorably reported by the committee on October 19, 1983. The provisions considered by the committee were from recommendations by the Subcommittee on Health, which marked up and approved the recommendations on October 5, 1983.

This title was further amended by the committee in markup on November 16, 1983, and on February 29 and March 1, 1984.

### ***Title XI—Trade Adjustment Assistance Programs***

This title originated from sections 3, 6, and 8 of H.R. 3391 as previously reported by the committee on June 29, 1983 (H. Rep. No. 98-281), and passed by the House on September 15, 1983. A Subcommittee hearing was held on the subject on February 15, 1983.

### ***Title XII—Highway Use and Diesel Fuel Tax Changes***

This title was added by the committee in markup on March 1, 1984, after a public hearing on the subject on February 23, 1984.



## VI. BUDGET EFFECTS AND VOTE OF THE COMMITTEE

### A. Committee Estimates

In compliance with clause 7 of Rule XIII of the Rules of the House of Representatives, the following statement is made relative to the effect on the budget by the committee amendment to H.R. 4170, as reported by the committee. The committee agrees with the cost estimate regarding the spending (outlay) provisions (included in item B., below) prepared by the Congressional Budget Office based upon their most recent economic projections.

The table below summarizes the budget effects of the tax and other provisions in the bill for fiscal years 1984-1989. Separate revenue or budget estimates are shown in the text (Part V) for each title of the bill. Detailed estimates for the tax provisions are shown in Part IV (Revenue Effects) of this committee explanation.

### SUMMARY BUDGET EFFECTS OF H.R. 4170

[In millions of dollars]

Item	Fiscal year					
	1984	1985	1986	1987	1988	1989
<b>Revenue effects of tax provisions (titles I-VIII and XII).....</b>	2,001	9,175	16,733	21,266	21,487	21,661
<b>Budget outlays:</b>						
Payments of excise tax revenues to Puerto Rico and the U.S. Virgin Islands (title I)...	0	-149	-240	-260	-264	-264
Social security disability provisions (title IX).....	57	328	375	369	369	277
Medicare provisions (title X) <sup>1</sup> .....	-56	-448	-573	-717	-849	-997
Trade adjustment assistance provisions (title XI).....	(2)	(2)	(2)	(2)	(2)	.....
<b>Total budget outlays effects .....</b>	0	-269	-438	-608	-744	-984

<sup>1</sup> The savings stated for this title assume House approval of a separate committee amendment related to a freeze on payment for physician services provided to hospital inpatients and with a requirement for mandatory assignment of claims for those services.

<sup>2</sup> Less than \$500,000.

The Office of the Actuary, Social Security Administration, has also estimated the impact of the disability amendments to Title II of the Social Security Act over a 75-year period. Under II-B economic assumptions, the disability trust fund remains in actuarial balance. (The estimates of the Office of the Actuary can be found below, Item C.)



## **B. Cost Estimate Prepared by the Congressional Budget Office**

In compliance with 2(l)(3)(C) of rule XI, requiring a cost estimate prepared by the Congressional Budget Office, the following report prepared by Congressional Budget Office is provided concerning budget outlay effects of the spending provisions of the bill. A letter concerning revenue effects of the tax provisions is for the coming.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, D.C., March 5, 1984.*

*Chairman, Committee on Ways and Means, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for Titles I (section 135), IX, X, and XI of H.R. 4170, The Tax Reform Act of 1984, as amended and ordered reported by the House Ways and Means Committee on March 1, 1984. Titles IX, X, XI, and Title I (section 135) contain the spending provisions in H.R. 4170. An estimate of the revenue provisions in Titles I through VIII is being provided under separate cover.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

RUDOLPH G. PENNER,  
*Director.*

### **CONGRESSIONAL BUDGET OFFICE COST ESTIMATE**

MARCH 5, 1984.

1. Billing number: H.R. 4170.
2. Bill title: The Tax Reform Act of 1983.
3. Bill status: As amended and ordered reported by the House Committee on Ways and Means, March 1, 1984.
4. Bill purpose: To provide for tax reform, and for other purposes.
5. Estimated cost to the Federal Government: This estimate is only for the spending provisions in H.R. 4170 in Titles IX, X, XI, and section 135 of Title I. An estimate of the revenue provisions in Titles I through VIII is being provided under separate cover. The section below shows only the sections that have a budgetary impact.

[By fiscal year, in millions of dollars]

	1984	1985	1986	1987	1988	1989
Title I—Section 135:						
Budget authority.....	0	-149	-240	-260	-264	-264
Outlays.....	0	-149	-240	-260	-264	-264
Title IX						
Budget authority.....	10	30	14	-17	-35	-73
Outlays.....	57	328	375	369	369	277
Title X						
Budget authority.....	-170	-487	-614	-758	-897	-1,052
Outlays.....	-57	-448	-573	-717	-849	-997
Title XI						
Budget authority/authorization .....	( <sup>1</sup> )	( <sup>1</sup> )	0	0	0	0
Outlays.....	( <sup>1</sup> )	( <sup>1</sup> )	0	0	0	0
Total:						
Budget authority/authorization .....	-160	-606	-840	-1,035	-1,196	-1,389
Outlays.....	0	-269	-438	-608	-744	-984

<sup>1</sup> less than \$500,000.

Basis of Estimate: A May 1, 1984 enactment date has been assumed for sections where an effective date has not been included in H.R. 4170. Title I (section 135) would alter payments of excise tax revenues to Puerto Rico and the U.S. Virgin Islands.

The Title IX proposals that affect the Disability Insurance programs are shown below. Included on this table are the impacts of the Disability Insurance proposals on the Medicare, Medicaid, and Supplemental Security Income programs.

## TITLE IX

[Outlays, by fiscal year, in millions of dollars]

	1984	1985	1986	1987	1988	1989
Termination of benefits based on medical improvement:						
DI.....	22	86	123	130	136	133
HI and SMI .....	4	25	35	40	40	40
Medicaid.....	( <sup>1</sup> )	3	4	4	4	4
SSI.....	1	3	4	4	4	4
Multiple impairments:						
DI.....	( <sup>1</sup> )	4	7	11	13	15
HI and SMI .....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	1	2	2
Medicaid.....	( <sup>1</sup> )	( <sup>1</sup> )	1	1	1	1
SSI.....	( <sup>1</sup> )	1	2	2	3	3
Face-to-face evidentiary hearings for reviews: DI .....	0	11	11	8	6	5
Continued payment during appeal:						
DI.....	25	149	134	114	107	31
HI and SMI .....	3	48	50	40	30	10
Medical personnel qualifications:						
DI.....	( <sup>1</sup> )	7	14	23	25	27
HI and SMI .....	( <sup>1</sup> )	( <sup>1</sup> )	1	2	5	7
Medicaid.....	( <sup>1</sup> )	( <sup>1</sup> )	1	2	3	4
SSI.....	( <sup>1</sup> )	2	3	5	6	7
Compliance with court orders: .....	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )
Vocational rehabilitation:						
DI.....	( <sup>1</sup> )	2	4	7	8	8
HI and SMI .....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
SSI.....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
Extension of sections 1619a and 1619b:						
Medicaid.....	3	7	5	0	0	0
SSI.....	( <sup>1</sup> )	1	1	0	0	0

## TITLE IX—Continued

[Outlays, by fiscal year, in millions of dollars]

	1984	1985	1986	1987	1988	1989
Total costs or savings:						
Budget authority .....	10	30	14	-17	-35	-73
Estimated outlays <sup>(a)</sup> .....	57	328	375	369	369	277

<sup>a</sup> Less than \$500,000.<sup>2</sup> The costs of this provision cannot be estimated because they depend on future court decisions.<sup>3</sup> The details do not add to the totals due to interaction between provisions.

The following table shows the Title X proposals that affect the Medicare program. The table also includes the impact of the Medicare proposals on the Medicaid program.

## TITLE X

[Outlays, by fiscal year, in millions of dollars]

	1984	1985	1986	1987	1988	1989
Medicare (Function 570):						
Clinical labs .....	-40	-250	-315	-390	-450	-530
Hepatitis B vaccine .....	3	-1	-2	-2	-4	-4
Limitation on certain foot care .....	-4	-11	-11	-12	-13	-14
Physician fee freeze .....	-15	-250	-300	-360	-420	-480
Hospital area wage index .....			( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
Delay single rate for SNFS .....	10	20				
Impact of medicare changes on premiums .....		89	109	111	113	116
Medicaid (Function 550):						
Impact of medicare changes on medicaid .....	-11	-45	-54	-64	-75	-85
Total:						
Budget authority .....	-170	-487	-614	-758	-897	-1,052
Outlays .....	-57	-448	-573	-717	-849	-997

<sup>1</sup> This proposal may have a budget impact in 1986 and in future years as the budget neutrality provision will no longer be in effect.

The Title XI proposals that affect Trade Adjustment Assistance are shown below.

## TITLE XI

[Outlays, by fiscal year, in millions of dollars]

	1984	1985	1986	1987	1988
Trade adjustment assistance (Functions 370, 500, and 600):					
Limitations on trade adjustment allowances (sec. 1101) .....	( <sup>1</sup> )	( <sup>1</sup> )			
Job search and relocation allowances (sec. 1102) .....	( <sup>1</sup> )	( <sup>1</sup> )			
Assistance to industry (sec. 1103) .....					
Total:					
Required budget authority/authorization level .....	( <sup>1</sup> )	( <sup>1</sup> )			
Estimated outlays .....	( <sup>1</sup> )	( <sup>1</sup> )			

<sup>1</sup> Less than \$500,000.

6. Estimated cost to State and local governments: The provisions in Title IX of this bill that affect SSI would increase expenditures of state and local governments. Their estimated net impact on state and local expenditures is less than \$15 million a year.

The changes in SSI would increase state and local government costs because virtually all states supplement federal SSI benefits.

By making more persons eligible for SSI benefits, state costs would increase. States are also affected by the added outlays in Medicaid because states finance a portion of the program. The current state financing share is 46 percent.

There could be come offsets to these added SSI and Medicaid costs to the extent that persons made eligible for SSI by the bill might otherwise be eligible for general assistance or health care financed fully by states and localities. These potential offsets are not included in the cost estimate.

Several of the changes in Title X to Medicare would affect Medicaid spending since about 15 percent of those covered by Medicare are also covered by Medicaid. Changes in estimated state and local Medicaid spending are shown below.

[By fiscal year, in millions of dollars]

	1984	1985	1986	1987	1988	1989
Estimated changes in State and local spending in medicaid .....	-10	-30	-35	-45	-55	-65

The clinical lab and physician fee freeze proposals would reduce Medicare expenditures to providers and save money in both the Medicare and Medicaid programs. The increase in Part B premiums would result in an increase in Medicaid expenditures to those states that buy into the Medicare program.

7. Estimate comparison: None.

8. Previous CBO estimate: On October 31, 1983, CBO provided an estimate of H.R. 4170, as ordered reported by the House Ways and Means Committee on October 19, 1983. This estimate is updated for recent Committee action and for later effective dates.

9. Estimate prepared by: Diane Burnside, Hinda Ripps Chaikind, Stephen Chaikind, Richard Hendrix, Kelly Lukins, Janice Peskin, and Jack Rodgers.

10. Estimate approved by: C. G. Nuckols for James L. Blum, Assistant Director for Budget Analysis.

### C. Administration Estimate of Financial Impact of Title IX

The following tables, prepared by the Office of the Actuary, Social Security Administration, and the Department of Health and Human Services summarize the estimated long-range and short-range financial impact of Title IX of the bill.

#### Estimated Cost of the Social Security Disability Provisions, Fiscal Years 1984-88

[In millions]

Provision	Fiscal year—					Total 1984-88
	1984	1985	1986	1987	1988	
OASDI benefit payments.....	\$60	\$390	\$580	\$650	\$730	\$2,410
OASDI administrative expenses .....	25	105	130	126	131	517
Medicare .....	25	45	65	80	95	310
Medicaid.....	13	21	21	15	20	90
SSI.....	3	2	9	19	23	50
Total.....	120	563	805	890	999	3,377

NOTE.—These estimates were made by the Office of the Actuary, Social Security Administration, based on the alternative II-B assumptions of the 1983 Trustees' Reports as revised in November 1983.

Source: Social Security Administration, Office of the Actuary, January 1984.



## Estimated Long-Range Financial Impact of the Social Security Disability Provisions

Bill section	Provision	Change in long-range OASDI actuarial balance (as percent of taxable payroll)
901.	Standard of review for terminations of disability benefits .....	(1)
902.	Study concerning evaluation of pain .....	(1)
903.	Guidelines for disability determinations:	
	Multiple impairments.....	(1)
	Noncompetitive work.....	(1)
	Work evaluation in mental impairment cases <sup>2</sup> .....	(1)
904.	Moratorium and revised criteria for mental impairment cases .....	(3)
905.	Review procedure governing disability determinations affecting continued entitlement to disability benefits; demonstration projects relating to review of denials of disability benefit applications.....	(1)
906.	Continuation of benefits through ALJ decisions.....	-0.01
907.	Qualifications of medical professional evaluating mental impairments.....	(1)
908.	Regulatory standards for consultative examinations.....	(1)
909.	Administrative procedure and uniform standards .....	(1)
910.	Compliance with certain court orders .....	(1)
911.	Revision of vocational rehabilitation criteria ....	(1)
912.	Advisory Council on Medical Aspects of Disability .....	(1)
913.	Qualifying experience for appointment of certain staff attorneys to ALJ positions .....	(1)
	Total <sup>4</sup> .....	-0.02

<sup>1</sup> Change in long-range OASDI actuarial balance is less than 0.005 percent of taxable payroll.

<sup>2</sup> Report language urges full "work evaluation" by a vocational expert in "borderline" mental impairment cases.

<sup>3</sup> The financial effect of this provision is attributed to the Secretary's initiative of June 7, 1983 for revising the criteria for evaluating mental impairment cases. Illustrative estimates of the change in the long-range OASDI actuarial balance for this revision are -0.03, -0.07, and -0.15 percent of taxable payroll based on the assumption that 10 percent, 25 percent of 50 percent of current mental impairment denials would be allowed (slightly higher percentages are assumed for current CDI

terminations). At this time it is not known what provisions would be made to these criteria.

<sup>4</sup> Total includes the effect of interaction among sections.

NOTE.—The estimates in this table are based on the alternative II-B assumptions of the 1983 Trustees Report.

Source: Social Security Administration, Office of the Actuary, Sept. 19, 1983.

#### **D. Vote of the Committee**

In compliance with clause 2(l)(2)(B) of Rule XI of the House of Representatives, the following statement is made about the vote of the committee on the motion to report the committee amendment to H.R. 4170. The committee amendment, to be offered as a substitute for the previously reported H.R. 4170, was ordered favorably reported by voice vote.

## VII. OTHER MATTERS TO BE DISCUSSED UNDER HOUSE RULES

In compliance with clause 3(1)(3) and 2(1)(4) of Rule XI of the Rules of the House of Representatives, the following statements are made with respect to the committee action on the committee amendment to H.R. 4170, as reported.

### *Oversight Findings*

With respect to subdivision (A) of clause 2(1)(3) (relating to oversight findings), the committee advises that it was as a result of the committee's oversight responsibilities with respect to the Internal Revenue Code that caused it to conduct public hearings and assess the need for legislation in several areas of the tax law. In addition, continuing concern with cost control in the medicare program and administrative difficulties in defining and determining medical disability require constant revaluations of programs, their constituent elements and their administration. The committee also determined that there is a need to amend the trade adjustment assistance provisions.

Details on the committee and subcommittee hearing and markup consideration of the various titles of the bill are contained in Part I (Legislative Background) of this report. Following is a brief summary of the purposes of each of the 12 titles in the committee bill.

Nine titles of the bill relate to the Internal Revenue Code. Title I generally freezes in the form they are in present law a number of tax provisions that would produce revenue reductions during the next 5 years. Because of the projected budgetary deficit situation in the current and next several fiscal years, the committee decided that the several selective revenue reductions should be deferred until the Federal Government's fiscal policy can be less restrictive. This title also incorporates many general tax reforms that will restrict or eliminate many abusive tax practices. Title I also deals with leasing, sale-leaseback, and analogous financial arrangements between the private business sector and tax-exempt public and private organizations with respect to real and personal property. The activities that have attracted attention involved little or no economic substance and were motivated primarily by profitable financial manipulations to make available to tax-exempt entities some of the tax benefits ordinarily available to private profit-seeking organizations. The committee was lead by the evidence presented in public hearings to the conclusion that legislation was necessary to preclude further nonsubstantive extensions of tax incentives beyond the intended beneficiaries.

Title II (Life Insurance Tax Provisions) responds to the mandate in TEFRA to provide permanent solutions to problems in the tax treatment of the life insurance industry that were given temporary

adjustments last year. Title III (Revision of Private Foundation Provisions) makes further adjustments in the law regulating charitable contributions and private foundations, and the relationships between private foundation and contributors. In addition, the excise tax on private foundation investment income is reduced in certain circumstances. These are changes made as part of the continuing committee oversight in this area, including hearings and report by the Subcommittee on Oversight.

In Title IV (Tax Simplification Provisions), the income tax rules in many areas were modified in ways to simplify taxpayer compliance and administration without at the same time making substantive changes in the underlying policy in these areas. This included revisions of estimated tax payment provisions, domestic relations provisions, a reordering and rationalization of the various income tax credits, and other improvements in the tax law.

For the past 5 years, there has been a moratorium on the issuance by the Treasury Department of regulations that relate to the income tax treatment of nonstatutory fringe benefits. In Title V of the bill (Fringe Benefits Provisions), the committee has provided specific statutory authority with regard to many of these benefits, and in the Code provisions rules are established to determine the degree of exclusion from gross income.

Title VI (Technical Corrections Provisions) contains necessary technical, clerical, conforming and clarifying amendments to provisions enacted in the Tax Equity and Fiscal Responsibility Act of 1982, the Subchapter S Revision Act of 1982, the Highway Revenue Act of 1982, the Social Security Amendments of 1983, and other recently enacted tax legislation.

Title VII (Tax-Exempt Bond Provisions) involves matters of urgent concern to Federal, State and local governments and many parts of the nongovernment community. The authority to issue qualified mortgage subsidy bonds expired at the end of 1983, and the committee had to act on the subject unless it intended to permit the authority to expire permanently. In addition, the continuing expansion in the flow of private purpose tax-exempt revenue bonds has affected the structure and volume of activity in the tax-exempt bond market and has raised again the question about where to place limits on the issuance of private purpose tax-exempt revenue bonds.

Miscellaneous adjustments to tax provisions that did not fit into the other titles are in Title VIII of the bill.

In Title XII, the committee bill revises the Highway Revenue Act of 1982 by changing the manner in which heavy trucks and trailers are taxed. The heavy vehicle use tax is restructured to reduce the tax while at the same time increasing the tax on diesel fuel used by trucks to make the highway excise tax burden on trucks more commensurate with their actual miles on the highways. The change in taxes is revenue neutral in that the projected revenues into the Highway Trust Fund will neither increase nor decrease over the revenues projected in the Highway Revenue Act of 1982.

Eligibility for disability benefits under the social security program is dealt with in Title IX (Social Security Disability Benefits Reform Act). Since there has been considerable controversy recently about the standards for determination of eligibility for disability



benefits, the committee undertook a substantive overhaul of the provisions.

Title X contains amendments to the laws regarding certain health care costs under the medicare program. Finally, title XI contains three amendments to the Trade Adjustment Assistance Programs, which recently was reauthorized, that will improve the efficiency of the program in realizing the intended objectives.

### *New Budget Authority and Outlays*

With respect to subdivision (B) of clause 2(1)(3), after consultation with the Director of the Congressional Budget Office, the committee states that the changes made to existing law by this bill affect new budget authority and outlays as described above in part VI of this report.

### *Tax Expenditures*

With respect to subdivision (B) of clause 2(1)(3), after consultation with the Director of the Congressional Budget Office, the committee states that the changes made to existing tax law by this bill involve the following changes in tax expenditures.

The overall thrust of the tax provisions is to reduce the amount of revenue that is not collected because of tax expenditure provisions. Tables in the part of this report on overall revenue effects (Part IV., above) present detailed estimates of revenue effects of the changes in tax expenditures and other tax provisions. The life insurance tax provisions (Title II) involve a net loss in revenue in each year of the 6-year period. The provision for nondeductible IRAs (in Title II) is a new tax expenditure through the tax deferral on the interest earnings of the deposits. The life insurance provisions restructure the tax provisions affecting the industry, and from the perspective of tax expenditures, the bill exchanges a larger number of tax expenditures for a smaller number.

The titles relating to private foundations, simplification provisions and technical corrections tend to be administrative in character and negligible as far as net revenue impact, even if a tax expenditure is added or expanded. The fringe benefit provisions (Title V) formally increase tax expenditures because they codify administrative practices which have excluded these income-in-kind payments from gross income. However, the bill generally reduces tax expenditures because it leaves unchanged or reduces the scope of fringe benefits in present statutory and administrative tax provisions.

Changes in the law relating to tax-exempt bonds (Title VII) will bring about a reduction in the revenue loss from some industrial revenue bonds as the volume limitations will reduce the growth in issuance of IDBs. The 5-year extension and revision of the mortgage subsidy bond provisions will involve increased tax expenditures of \$4.0 billion over the 6-year (1984-1989), but the revisions of the other IDB provisions will reduce the revenue loss from the other tax expenditures. The net effect of the title VII tax-exempt bond changes will be to increase overall tax expenditures by \$1.4 billion over the 6-year period.



The provisions in title VIII (miscellaneous tax provisions) will involve some increases and decreases in tax expenditures; the amounts are shown in Part IV of the report.

***Consultation with Congressional Budget Officials on Budget Estimates***

With respect to subdivision (C) of clause 2(l)(3), the committee advises that the Director of the Congressional Budget Office has examined the committee's revenue estimates (as indicated in Part IV of this report) and submitted the following statement:

(TO BE SUPPLIED)

***Oversight by Committee on Government Operations***

With respect to subdivision (D) of 2(l)(3), the committee advises that no oversight findings or recommendations have been submitted to the committee by the Committee on Government Operations regarding the subject matter of this bill.

***Inflationary Impact***

In compliance with clause 2(l)(4), the committee states that the enactment of this bill is expected to contribute to a modest decrease in inflationary pressures in the future by raising revenues (an estimated \$49.2 billion over the 4-year period, fiscal years 1984-1987), which reduce the projected budget deficit and the consequent need of the Federal Government to borrow money in competition with the private sector. Further inflationary restraints will develop from the restriction on private purpose tax-exempt bonds because the businesses affected by the amendments will be required to compete for funds at the higher rates in the taxable money market. The restraints on public property leasing and tax-shelter and other tax reforms in Title I will redirect the use of otherwise investable funds to substantive economic projects that provide prospective profit-making opportunities that will increase both production and productivity. The tax freeze provisions in Title I will reduce potential budget deficits by avoiding tax reductions in the next several fiscal years.

# DEFICIT REDUCTION ACT OF 1984

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EXPLANATION OF PROVISIONS  
APPROVED BY THE  
COMMITTEE ON MARCH 21, 1984

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COMMITTEE ON FINANCE  
UNITED STATES SENATE

Volume I



APRIL 2, 1984

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U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1984

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new Aquatic Resources Trust Fund to be included in the Internal Revenue Code.

Also, the bill expands the existing excise tax on arrows to include arrows used by crossbow hunters.

These provisions generally are effective on October 1, 1984; the tax on tackle boxes and fishfinders will apply on October 1, 1985.

## ***2. Increase in the distilled spirits excise tax rate***

The bill increases the excise tax rate on distilled spirits from \$10.50 per proof gallon to \$12.50 per proof gallon, effective on January 1, 1985. This change will increase the excise tax paid on a fifth of 86-proof whiskey by approximately 32 cents.

## ***3. Exemption from aviation excise taxes for certain helicopter operations***

The present exemption from the airways fuels and passenger ticket taxes for helicopters engaged in timber operations or hard mineral exploration, and not using the federally aided airport or Federal airways control systems, are extended by the bill to helicopters engaged in oil and gas exploration, effective on April 1, 1984.

## ***4. Technical amendments to the Hazardous Substance Response Revenue Act of 1980***

Present law imposes an excise tax on certain chemical substances, the revenue from which go into the Hazardous Substance Response Trust Fund. The bill makes technical modifications to this excise tax in three areas. First, an exemption is provided for light hydrocarbons used in the production of motor fuels. Second, certain copper, lead, or zinc compounds which have a transitory existence during metal refining are exempted from tax. Third, the administrative mechanism through which the exemption for fertilizer may be claimed is simplified.

# **D. Employee Benefits**

## ***1. Unemployment compensation for pre-1978 periods***

The bill amends the Revenue Act of 1978 to provide that the provisions of that statute which make includible in income a portion of unemployment compensation benefits apply to payments of unemployment compensation made after 1978 except payments for weeks of unemployment ending before December 1, 1978. The bill also extends until one year after enactment the period for claiming any credit or refund attributable to this amendment.

## ***2. Employee stock options***

The bill provides that an employee may defer income on the exercise of certain employee stock options until the employee disposes of the stock. These options may not be issued solely to highly compensated officers and shareholder-employees. This provision is effective for options exercised after the date of enactment. Two technical amendments are made to the incentive stock option provision.



### ***3. Income tax exclusion for certain employee achievement awards***

The bill provides a new income-tax exclusion to employees for certain awards received (after the date of enactment) from an employer for productivity, safety, or length of service. The exclusion allowed to an employee in one year applies to the extent that the employer's cost for all awards to that employee in the year does not exceed \$4,800 in the case of qualified plan awards, or \$1,200 for other awards. The exclusion is available only for watches, clocks, rings, emblematic jewelry, certain personal accessories, and other traditional retirement or nonretirement awards. Any excess of the lesser of the employer's cost for or the value of such awards over the exclusion dollar limits will be expressly includible in the employee's gross income, as will the value of nontraditional employee achievement awards or any other awards to employees.

Certain limitations will apply to the exclusion for the employee (and to the deduction allowed to the employer). These include limitations on the number of employees in a business who can be given productivity or safety awards; on how frequently a particular employee can receive productivity, etc. awards; and on the use of nominal awards in calculating the average cost limitation for the definition of a qualified award plan. Also, certain nondiscrimination rules will apply. Recordkeeping and reporting requirements for an employer's award programs can be imposed by the IRS.

### ***4. Moratorium on fringe benefit regulations***

The bill extends for two years (through 1985) the moratorium on issuance of Treasury regulations relating to the income tax treatment of nonstatutory fringe benefits. Also, the extended moratorium applies with respect to certain campus housing provided to employees by educational institutions during 1984 and 1985.

### ***5. Exclusion for educational assistance benefits; timing of deduction for deferred educational benefits***

The provisions of present law which exclude employer-provided educational assistance benefits from an employee's income and wages for income and payroll tax purposes do not apply for taxable years beginning after December 31, 1983. The bill extends this exclusion to apply to taxable years beginning on or before December 31, 1985.

Under a recent court case, a plan providing deferred educational benefits for the children of a corporation's employees was held to be a welfare benefit plan, thus allowing the employer a deduction for plan contributions in the year made. The bill provides that such a plan is to be treated as a nonqualified deferred compensation plan, so that deductions for plan contributions will not be allowed until the benefit payments under the plan are included in the employee's gross income.

### ***6. FICA and FUTA exemption for employer payment of certain employee contributions to State and local retirement plans***

The bill makes a technical correction to the Social Security Amendments of 1983 to provide that employer payments ("pick-ups") of employee contributions under a State or local retirement

plan are subject to FICA and FUTA only if the pickup is pursuant to a salary reduction agreement.

### **E. Miscellaneous Treasury Administrative Provisions**

The bill makes a number of minor amendments relating to Treasury administrative provisions. The bill simplifies certain requirements of the Treasury Department to make reports to the Congress, removes the \$1 million limitation of the Treasury working capital fund, increases the authorization limit from \$1 million to \$10 million on the revolving fund for the redemption of real property, allows the Secretary of the Treasury to accept gifts and bequests for the Treasury Department, allows an extension of time for court review of a jeopardy assessment where the government is not promptly served, removes the \$1 million limitation on the Secretary of the Treasury's special authority to dispose of obligations, allows the Internal Revenue Service a minimum of 60 days to assess unpaid taxes shown on an amended return, provides the government a lien on the assets of all financial institutions which issue an unpaid guaranteed draft for the payment of taxes, allows the disclosure of windfall profit tax returns to State tax agencies, and repeals the requirement that the Secretary approve changes in taxpayer's financial reporting of the investment credit.

The bill repeals the present occupational tax on manufacturers of stills and makes the present statutory requirement that the Treasury Department be notified upon removal of any still from the place of manufacture discretionary with the Treasury. The bill also modifies the rules governing allowance of drawbacks with respect to distilled spirits used for food or medicinal purposes. Additionally, the Treasury Department is authorized to disclose certain information about alcohol fuel producers to administrators of State alcohol laws. The requirement that certain containers of distilled spirits bear Government-supplied strip stamps is repealed; these containers will continue to be required to bear tamper-proof closure devices. The bill also expands the circumstances in which distilled spirits can be withdrawn from bond without payment of tax to permit tax-free withdrawal of such spirits for use in the production of nonbeverage (e.g., cooking) wine.

The bill requires payment of excise taxes on all taxable alcohol and tobacco products not later than 14 days after the end of each semimonthly period. In addition, taxpayers who were liable for more than \$5 million in any such tax in the preceding calendar year are required under the bill to pay such taxes during the succeeding year by electronic funds transfer to a Federal Reserve bank. This provision is effective on July 1, 1984.

Present law provides an exclusion from income for certain payments to a utility in aid of construction if expenditures are made in the following two years. The bill extends the statute of limitations with respect to the treatment of these payments until expiration of the statute on the last year in which expenditures may be made if the payment is to be excluded from income.

## **TITLE IX. SPENDING REDUCTION PROVISIONS**

### **A. Health Provisions**

#### **1. Medicare**

##### ***Part B premium***

Permanently establishes Part B Premium at 25 percent of program costs.

##### ***One-month delay in medicare entitlement***

Delays eligibility for Parts A and B of Medicare until the first day of the month after the month in which the individual turns 65 years of age.

##### ***Modification of working aged provision***

Medicare would become the secondary payor for individuals who elect to be covered under a younger spouse's employer-based health plan.

##### ***Limitation on physician fee prevailing and customary charge levels; participating physician incentives***

Freezes all customary and prevailing fees for 1 year beginning July 1, 1984. Continues freeze for 1 additional year on prevailings of non-participating physicians.

##### ***Limitation on increase in hospital costs per case***

Limits for 2 years the increase in the hospital cost portion payment amounts to the market basket minus one-half percentage point. Limits increase in DRG portion of the payment amounts to the market basket plus one-half percentage point.

##### ***Fee schedule for clinical laboratory services***

Directs that a fee schedule be established for all outpatient clinical laboratory services provided to Medicare beneficiaries.

##### ***Revaluation of assets acquired by hospitals***

Disallows the revaluation of hospital assets acquired in fiscal year 1985 and thereafter for purposes of Medicare reimbursement.

##### ***Repeal of preadmission diagnostic testing provision***

Repeals provision of current law which provides for a higher rate of reimbursement for preadmission testing done by hospitals and physicians.



***Skilled nursing facility reimbursement***

Maintains reimbursement rates in effect prior to TEFRA for accounting periods beginning on or after October 1, 1982 and establishes new rates, beginning July 1984, and thereafter.

***Rounding of part B payments***

Rounds Part B payments on charge based claims down to the next lower whole dollar amount.

***Agreements for Medicare claims processing***

Permits the Secretary of Health and Human Services to negotiate contracts with carriers and intermediaries on a non-cost related basis.

***Lesser of cost or charges***

Requires the Secretary to issue regulations to isolate the calculation of lesser of cost or charges for outpatient services from the calculation for inpatient services.

***Hepatitis B vaccine***

Permits Medicare coverage of Hepatitis B vaccine for End Stage Renal Disease dialysis patients.

***Limitation on certain foot care services***

Requires the Secretary to issue regulations establishing coverage guidelines under the Medicare program for debridement of mycotic toenails.

***Coverage of hemophilia clotting factor***

Permits Medicare coverage for the supplies and products necessary for the self-administration of the clotting factor used by individuals who have hemophilia.

***Indexing of Part B deductible***

Indexes the amount of the Part B deductible in calendar years 1985 and 1986 by the percentage by which the Medicare economic index increases each year.

***Cost sharing for durable medical equipment furnished as a home health benefit***

Reduces reimbursement to home health agencies for durable medical equipment to 80 percent of reasonable costs, and permits the agencies to bill beneficiaries for the remaining 20 percent.

**2. Medicaid and MCH*****Extension of medicaid payment reductions and offsets***

Extends for 3 years reductions in Federal Medicaid payments at a level of 3 percent.

***Mandatory assignment of rights of payment by medicaid recipients***

Mandates that States require Medicaid applicants to assign to the State their rights to third party medical payments.

***Increase in Medicaid ceiling amount for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa***

Increases funding to Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

***Increase in the authorization for the Maternal and Child Health (MCH) Block grant***

Permanently increases the authorization level for the MCH block grant to \$455 million in 1986 and thereafter.

***Medicaid coverage for pregnant women***

Mandates States to provide Medicaid coverage beginning with the medical determination of pregnancy to every woman who would be eligible for Aid to Families with Dependent Children if the child were born.

***Recertification of skilled nursing facility and intermediate care facility patients***

Modifies the frequency with which physicians recertify Medicaid patients institutionalized in nursing homes and modifies the related penalty provisions.

**3. Other Medicare and Medicaid Provisions**

***Study of physician reimbursement for cognitive services***

Directs the Office of Technology Assessment to report to the Congress on ways to modify the existing system for determining Medicare allowances to eliminate inequities that exist between reimbursement levels for medical procedures and cognitive services.

***Elimination of Part B deductible for certain diagnostic laboratory tests***

Eliminates application of the annual Part B deductible in the case of diagnostic tests performed in a laboratory which has entered into a negotiated rate agreement with Secretary.

***Payment for services following termination of participation agreements with home health agencies or hospices***

Changes the ending date of coverage for services provided under a plan of care following termination of a participation agreement with a home health agency or hospice.

***Repeal of special tuberculosis treatment requirements under Medicare and Medicaid***

Repeals special tuberculosis treatment requirements under Medicare and Medicaid.

***Medicare recovery against certain third parties***

Establishes the statutory right of Medicare to recover directly from a liable third party if the beneficiary himself does not do so.



***Indirect payment of supplementary medical insurance benefits***

Permits Part B payments to be paid to a health benefits plan whose payment is accepted by the physician or other supplier as payment in full.

***Elimination of health insurance benefits advisory council***

Eliminates the Health Insurance Benefits Advisory Council (HIBAC).

***Confidentiality of accreditation surveys***

Extends the same disclosure protections given the survey information of the Joint Commission on the Accreditation of Hospitals (JCAH) to similar survey information provided to the Secretary by the American Osteopathic Association or other national accreditation organizations.

***Flexible sanctions for noncompliance with requirements for End Stage Renal Disease (ESRD) facilities***

Allows the Secretary to apply intermediate sanctions, such as a graduated reduction of reimbursement, to ESRD facilities when noncompliance does not jeopardize patient health or safety or justify decertification of such facilities.

***Use of additional accrediting organizations under Medicare***

Extends the Secretary's authority to permit reliance on accrediting organizations in determining whether rural health clinics, laboratories, clinics, rehabilitation facilities, and public health agencies meet Medicare requirements.

***Repeal of exclusion of for-profit organizations from research and demonstration grants***

Extends the existing research and demonstration grant authority to for-profit organizations.

***Requirements for medical review and independent professional review under Medicaid***

Makes consistent State Medicaid plan requirements for medical review in skilled nursing facilities and independent professional review in intermediate care facilities.

***Flexibility in setting rates for hospitals furnishing long-term care services under Medicaid***

Eliminates the specific Medicaid requirements for setting payment rates applicable only to certain hospitals furnishing long-term care services.

***Authority of the Secretary to issue and enforce subpoenas under Medicaid***

Authorizes the Secretary to issue and seek enforcement of subpoenas under Medicaid to the same extent as under the Medicare program.

***Repeal of authority for payments to promote closing and conversion of underutilized hospital facilities***

Repeals the present law authority under which the Secretary may make Medicare and Medicaid payments to cover capital and increased operating costs associated with the conversion or closing of underutilized hospital facilities.

***Presidential appointment of and pay level for the Administrator of the Health Care Financing Administration (HCFA)***

Provides for appointment of the Administrator of HCFA by the President, with the advice and consent of the Senate.

***Exclusion of certain entities owned or controlled by individuals convicted of Medicare- or Medicaid-related crimes***

Extends the Secretary's current authority to exclude from Medicare and Medicaid parties convicted of program related crimes.

***Judicial Review of Provider Reimbursement Review Board Decisions***

Clarifies the effective date of certain provisions of the "Social Security Amendments of 1983" (P.L. 98-21) dealing with judicial review.

***Access to home health services***

Permits physicians with certain financial interests in certain home health agencies to carry out certification and plan-of-care functions for patients of those agencies.

***Provider representation in Peer Review Organizations (PROs)***

Provides that a PRO governing body may include a governing body member, officer, or managing employee of a health care facility.

***Prospective payment assessment commission***

Includes a number of amendments to clarify the manner in which the Commission is to function.

***Medicaid clinic administration***

Makes it clear that the administrator of a clinic need not be a physician in order for the clinic to participate in Medicaid.

***Enrollment and premium penalty with respect to working aged provision***

Waives the Part B delayed enrollment penalty for workers age 65 through 69 who elect private coverage under the provisions of TEFRA for the period of such coverage.

***Emergency room services***

Modifies Section 1861(v) of the Social Security Act to include a definition of "bona fide" emergency.

### ***Payment for services of a nurse anesthetist***

Requires that the costs a hospital incurs in employing Certified Registered Nurse Anesthetists (CRNAs) be reimbursed on a reasonable cost basis.

### ***Prospective payment wage index***

Directs the Secretary of HHS to remedy certain problems which exist in the calculation of the wage index for hospital workers.

### ***Hospice contracting for core services***

Allows the Secretary to waive the nursing care "core services" requirements for certain hospices.

### ***Exemption of public psychiatric hospitals from provision limiting reimbursement to SNF rates***

Delays until July 1, 1985, the application of any reimbursement reductions required to be made to public psychiatric hospitals due to the level of care received by Medicaid patients in such hospitals.

### ***Certification of psychiatric hospitals***

Permits psychiatric hospitals and psychiatric units of general hospitals to participate in Medicare and Medicaid on the basis of a survey by the Secretary of HHS or, if found appropriate, accreditation by the American Osteopathic Association or the Joint Commission on the Accreditation of Hospitals.

### ***Payments to teaching physicians***

Modifies the calculation of Medicare reimbursement for certain teaching physicians in States with low Medicaid payment rates.

### ***Pacemaker reimbursement review and reform***

Directs the Secretary to study the impact technology should have on the costs of physician services, publish guidelines on the frequency and appropriate payment levels for trans-telephonic monitoring, establish an FDA-administered pacemaker registry, and study the reasonableness of Part A payments for pacemaker implants.

### ***Open enrollment period for health maintenance organizations and competitive medical plans***

Allows the Secretary up to three years to coordinate an open enrollment period in each area serviced by two or more participating HMO's.

### ***Waivers for Social Health Maintenance Organizations***

Requires the Secretary to approve certain waivers for a project to demonstrate the concept of a social HMO at four sites.

### ***Funding for PSRO review***

Provides that the automatic Trust Fund Peer Review Organization funding provisions be extended to PSRO's. Delays for 3 months, two implementation dates contained in current law.



## B. Income Maintenance Provisions

### *Parents and siblings of dependent child included in AFDC family*

Establishes a standard filing unit for the AFDC program.

### *Households headed by minor parents*

Requires that in order to qualify for AFDC benefits, an unmarried minor parent and her child would have to reside in the home of the minor parent's own parent or guardian, except in certain instances.

### *Clarification of earned income provision*

Clarifies current law with regard to the definition of the term "earned income".

### *CWEP work for federal agencies permitted*

Clarifies a provision of the 1981 Omnibus Budget Reconciliation Act which authorized the operation of Community Work Experience Programs (CWEP) by the States.

### *Earned income of full-time students*

Permits States to exclude the earnings of a child from the 150 percent limit on gross family income for the determination of eligibility for the AFDC program.

### *Adjustments in SSI benefits on account of retroactive benefits under Title II*

Provides for the adjustment of retroactive benefits under the Supplemental Security Income (SSI) and social security programs on account of benefits already paid under either of these programs.

### *Regulatory initiative on medical support*

The Committee agreed to direct the Secretary to require State Child Support Enforcement (CSE) agencies to petition the court to include medical support as part of the child support order.

## C. Social Security Provisions

### *Special Social Security treatment for church employees*

Permits churches and certain church-controlled organizations, opposed for religious reasons to the payment of the employer FICA tax, to elect not to be subject to FICA tax liability or to any requirement to withhold social security taxes on behalf of employees with respect to services performed after December 31, 1983. This election is a one-time irrevocable decision, available only to such organizations which were not covered by social security on December 31, 1980. The employees of electing organizations are treated, for purposes of social security taxes, similarly to the self-employed, and are taxed at the net SECA rate; however, a deduction for unreimbursable business expenses is not allowed. The employer's election remains in effect only if certain information reporting requirements are met.

***Social Security coverage for legislative branch employees not covered by the Civil Service Retirement System***

Requires that an individual in legislative branch employment maintain continuous participation in the Civil Service Retirement System in order to retain an exemption from social security.

***Employees of nonprofit organizations who are required to participate in the Civil Service Retirement System***

For purposes of social security, would treat like Federal employees those employees of nonprofit organizations which are covered on a mandatory basis by the Civil Service Retirement System.

**D. Grace Commission Provisions**

***Income and eligibility verification procedures***

Authorizes and requires data on earned and unearned income from IRS and SSA to be made available to agencies administering means-tested Federal benefit programs. Requires programs to utilize such data. Directs each State to maintain a system of quarterly wage reporting.

***Collection and deposit of payments to executive agencies***

Authorizes the Secretary of the Treasury to prescribe the collection mechanisms of Federal agencies. Allows the Secretary to impose sanctions for noncompliance.

***Collection of nontax debts owed to Federal agencies***

Authorizes the Internal Revenue Service to reduce the amount of any refund of internal revenue taxes by the amount of certified nontax debt owed to the Federal Government.

**E. Cover Over Provisions**

***Clarification of definition of articles produced in Puerto Rico or the Virgin Islands***

Clarifies the definition of goods produced in Puerto Rico and the Virgin Islands for purposes of the application of a special excise tax/cover provision.

***Limitation on transfers of excise tax revenues to Puerto Rico and the Virgin Islands***

Limits the transfer of certain taxes collected on distilled spirits into the Treasuries of Puerto Rico and the Virgin Islands.



Code. An expanded charitable deduction would also be allowed for certain donations of scientific and technological equipment to universities. A related incentive provision of the bill extends the current suspension of Treasury regulations which require the allocation of research and experimental expenses between U.S. and foreign sources. This effectively lowers the U.S. tax liability of certain U.S. corporations that engage in research activities and pay relatively high foreign taxes.

The committee believes that all regions of the country should participate in the nation's economic growth. Thus, the bill contains a new provision for creating enterprise zones in those areas of the country which are most in need of development assistance. The bill authorizes the Secretary of the Department of Housing and Urban Development to designate up to 25 enterprise zones per year, over a three-year period, meeting certain criteria of economic distress. Firms in enterprise zones will be eligible for numerous special tax incentives for capital investment and for hiring zone employees, as well as regulatory relief, for a period of 20 years plus a four-year phase-out period.

### **Grace Commission Report**

The committee believes that the President's Private Sector Survey on Cost Control developed a number of important proposals for controlling Federal outlays and improving administrative practices. In an effort to increase government efficiency, the committee has recommended three changes proposed by the Grace Commission. First, the bill authorizes the Internal Revenue Service to offset delinquent nontax debts owed the Federal Government against Federal income tax refunds. Second, the bill authorizes and requires the Internal Revenue Service to make available data on unearned income to Federal and State agencies that administer means-tested Federal benefit programs, and requires States to collect quarterly wage data for purposes of income verification. Last, the bill directs the Treasury Department to issue regulations requiring agencies to implement the Grace Commission recommendations for accelerating the collection and deposit of nontax Federal receipts.

### **Spending Reduction Provisions**

The Administration budget estimates current law benefit and administrative outlays under Medicare at \$76.8 billion in fiscal year 1985. Of this amount, benefit payments account for \$74.8 billion. This represents an increase of 15.9 percent over fiscal year 1984 benefit payments of \$64.6 billion.

Both in terms of total outlays and total benefits per enrollee receiving reimbursement, the rate of growth for Part B of Medicare continues to exceed that for Part A. Whereas, Part A benefits per enrollee receiving reimbursement are 58 percent higher than the projected fiscal year 1985 medical care component of the CPI, Part B benefits are 100 percent higher.

The spending provisions for the most part address Part B of Medicare, the Supplemental Medical Insurance (SMI) program. In fiscal year 1984, the general fund of the U.S. Treasury will have to

contribute an estimated \$16.8 billion to the SMI trust fund in order to keep it solvent. That general fund obligation is expected to grow by 13.3 percent to \$19 billion in fiscal year 1985.

The major provisions which affect SMI spending reductions include holding reasonable charges for all physicians to prior year levels for a twelve month period followed by a second twelve month period during which a limited fee freeze is imposed on those physicians who do not accept assignment, establishing a fee schedule for clinical laboratory services, modifying the premium liabilities for Part B enrollees, delaying entitlement to Medicare benefits until the month after an individual becomes 65 years of age, and allowing a non-working spouse aged 65 to 69 to elect primary coverage under the working spouse's employer group health plan even though the working spouse is not yet 65 years of age.

The provisions which delay entitlement and modify current law with respect to the working aged also affect Part A of Medicare, the Hospital Insurance (HI) program.

Hospital Insurance, Part A, benefits for fiscal year 1985 are projected to be \$50.7 billion, that is, \$6.6 billion or 15 percent higher than fiscal year 1984. Inpatient hospital services will account for 95 percent of Part A benefit payments.

Several spending provisions are specific to the HI program. The major provision which reduces HI spending limits the rate of increase in payments to hospitals.

The committee recognizes the tremendous improvement that has been made in the health status of the elderly as a result of the creation of Medicare in 1965. Certainly the committee firmly believes in the need to preserve this essential program. In considering spending reductions, it was the committee's desire not to simply cut another program. It was rather to protect one of the most important programs the Nation offers its citizens.

The Administration budget projects total Federal-State Medicaid costs for fiscal year 1985 under current law to be \$41.4 billion, of which the Federal share is \$23.2 billion. Of the Federal amount, \$22.0 billion represents payments for benefits, with the remaining \$1.2 billion going for State and local administrative costs. This represents an increase in total Federal outlays of 14.5 percent over fiscal year 1984, attributable in part to the discontinuation of the current 4.5 percent reduction in Federal payments.

The remaining health related spending provisions address the Medicaid program. Principal among these is a provision to extend the current reduction in Federal matching payments to the States for three more years. The reduction would be set at three rather than the current 4.5 percent, however offsets, which allow the States to decrease the Federal reduction, would be permitted as under current law.

Other Medicaid related provisions increase spending ceilings for Puerto Rico and the Territories, extend medicaid coverage to certain pregnant women, and reduce the frequency at which physicians certify the institutional needs of nursing home patients. The nursing home patient certification provision also reduces spending for Part A of Medicare, while a provision delaying application of a single skilled nursing care rate to hospital-based nursing care units increases outlays. Additionally, the committee has included a provi-

sion to increase the authorization level for the Maternal and Child Health Block Grant program and a number of provisions without budgetary effect which modify various elements of the Medicare and Medicaid programs.

Additional items were added by the committee which deal with the Aid to Families with Dependent Children (AFDC) Program and the Supplemental Security Income (SSI) Program. For the most part, these provisions provide administrative simplification of technical clarifications for the Programs.

First, the committee agreed to a provision which would establish a standard filing or assistance unit for AFDC family. A related provision would require a minor parent of an AFDC child to remain with her own parent or legal guardian whenever possible. These provisions will not only target assistance to those with limited resources, but they will also simplify State administration of the program. Two additional technical amendments were approved, as well as a provision with negligible outlay effect. This provision permits States to exclude the earnings of a full time student from the eligibility determination calculation.

Second, the committee agreed to a provision which provides for the collection of windfall benefits from Supplemental Security Income benefits as well as from benefits paid under the Old Age Survivors and Disability Insurance programs. This provision is basically a technical correction to an amendment adopted in 1980.



#### **4. Moratorium on Issuance of Fringe Benefit Regulations (sec. 829 of the bill)**

##### ***Present Law***

##### ***Moratorium***

The Economic Recovery Tax Act of 1981 extended, through December 31, 1983, the legislative moratorium (first enacted in 1978) prohibiting the Treasury Department from issuing final regulations relating to the income tax treatment of nonstatutory fringe benefits. Also, the 1981 statute provided that no regulations relating to the treatment of such fringe benefits can be proposed which would be effective prior to expiration of the moratorium.

##### ***Employer-provided housing***

Present law (Code sec. 119) excludes from an employee's gross income the value of lodging provided by the employer if (1) the lodging is furnished for the convenience of the employer, (2) the lodging is on the business premises of the employer, and (3) the employee is required to accept the lodging as a condition of employment. Several court decisions have held that on-campus housing furnished to faculty or other employees by an educational institution under the circumstances involved in those cases did not satisfy the section 119 requirements, and hence that the fair rental value of the housing (less any amounts paid for the housing by the employee) was includible in the employee's gross income and constituted wages for income tax withholding and employment tax purposes.<sup>1</sup>

##### ***Reasons for Change***

##### ***Moratorium***

The committee believes that a proper review of the important issues involved in the income and employment tax treatment of nonstatutory fringe benefits requires an additional period of time.

##### ***Faculty housing***

The committee recognizes that certain court cases have upheld the Internal Revenue Service's position in those cases that the value of housing (including campus housing) provided by an em-

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<sup>1</sup> *Bob Jones University v. U.S.*, 670 F.2d 167 (Ct.Cl. 1982); *Goldsboro Christian Schools, Inc. v. U.S.*, 79-1 CCH USTC para. 9266 (E.D.N.C. 1978) (value of lodging furnished to faculty constitutes wages subject to income tax, FICA, and FUTA withholding, in light of "long and consistent history of regulations and rulings, expressly and explicitly applying withholding taxes to lodging not furnished for the employer's convenience \* \* \*"), aff'd order entered in *Goldsboro Christian Schools, Inc. v. U.S.*, 436 F.Supp. 1314 (E.D.N.C. 1977), aff'd per curiam in unpublished opinion (4th Cir. 1981), aff'd 103 S.Ct. 2017 (1983); *Winchell v. U.S.*, 564 F.Supp. 131 (D.Neb. 1983) (value of campus home taxed to college president); and *Coulbourn H. Tyler*, 44 CCH Tax Ct. Memo. 1221 (1982).

ployer at below fair market value to an employee, less amounts paid by the employee for the housing, is includible in income and wages. At the same time, in view of its extension of the moratorium on fringe benefit regulations to allow further study of the issues, the committee believes that it is appropriate that the moratorium be applied during the two-year extension period with respect to certain campus lodging furnished by an educational institution during the extension period.

### *Explanation of Provisions*

#### *a. Moratorium on fringe benefit regulations generally*

The bill extends the legislative moratorium on issuance of fringe benefits regulations through December 31, 1985.

Under the bill, the Treasury Department (Internal Revenue Service) is prohibited from issuing prior to January 1, 1986 final regulations, under Code section 61, relating to the income tax treatment of nonstatutory fringe benefits. In addition, no regulations relating to the treatment of nonstatutory fringe benefits under section 61 are to be proposed which would be effective prior to January 1, 1986.

Although the provision of the bill relates only to the issuance of regulations, it is the intent of the Congress that the Treasury Department (Internal Revenue Service) will not in any significant way alter, or deviate from, the historical income-tax treatment of traditional nonstatutory fringe benefits through the issuance of revenue rulings or revenue procedures, etc. The bill does not prevent the Treasury or Revenue Service from continuing to study the question of the appropriate tax treatment of nonstatutory fringe benefits.

#### *b. Faculty housing*

Under the bill, the extended legislative moratorium is applied to prohibit the issuance of income tax regulations providing for the inclusion in gross income of the excess of the fair market value of qualified campus lodging over the greater of the operating costs paid in furnishing the lodging or the rent received. The term qualified campus lodging means lodging furnished by an educational institution (within the meaning of sec. 170(b)(1)(A)(ii))<sup>2</sup> to any employee of the educational institution (or to the employee's spouse or dependents), including non-faculty employees. The bill applies only if the employer-furnished lodging is located on a campus of, or in close proximity to, the educational institution. Under the bill, the moratorium does not apply with respect to any amount of the value of lodging if such amount was treated as wages or included in income when furnished.

<sup>2</sup> An educational organization is described in sec. 170(b)(1)(A)(ii) "if its primary function is the presentation of formal instruction and it normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The term includes institutions such as primary, secondary, preparatory, or high schools, and colleges and universities," and includes both public and private schools (Treas. Reg. sec. 1.170A-9(b)(1)).



*Effective Date*

The general extension of the legislative moratorium is effective on enactment. The application of the extended moratorium with respect to qualified campus lodging applies with respect to lodging furnished after December 31, 1983 and before January 1, 1986.

*Revenue Effect*

The provisions are estimated to reduce budget receipts by a negligible amount in each of fiscal years 1984, 1985, and 1986.

## TITLE IX—SPENDING REDUCTION PROVISIONS

### A. Medicare, Medicaid, and Other Health Provisions

#### 1. Part B Premium (sec. 901 of the bill)

##### *Present Law*

By law, the Secretary of Health and Human Services has been required to calculate each December the increase in premiums of those who elect to enroll in the Supplementary Medical Insurance (or part B) portion of the Medicare program. The new premium rates have been effective on July 1 of the year following the year in which the calculation was made. Ordinarily, the new premium rate is the lower of: (1) an amount sufficient to cover one-half of the costs of the program for aged beneficiaries or (2) the current premium amount increased by the percentage by which cash benefits increased under the cost-of-living adjustment (COLA) provisions of the Social Security program. Premium income, which originally financed half of the costs of part B, had declined—as the result of this formula—to less than 25 percent of total program costs. The “Tax Equity and Fiscal Responsibility Act of 1982” (TEFRA) temporarily suspended the COLA limitation for two one-year periods, beginning on July 1, 1983. During these periods, enrollee premiums would be allowed to increase to amounts necessary to produce premium income equal to 25 percent of program costs for elderly enrollees. The limitation would again apply with respect to periods beginning July 1, 1985 and thereafter.

The “Social Security Amendments of 1983” (Public Law 98-21) postponed the scheduled July 1, 1983 increase to January 1, 1984 to coincide with the delay in the cost-of-living increase in social security cash benefit payments. Further increases will occur in January of each year based on calculations made the previous September. Public Law 98-21 further provided that the suspension of limitations as authorized by TEFRA is to apply for the two-year period beginning January 1, 1984, and ending December 31, 1985.

##### *S. 2062*

S. 2062 would extend for one year the existing temporary provision which fixes the proportion of the part B Medicare costs financed by enrollees at 25 percent of program costs for aged beneficiaries.

##### *Modified Provision*

The provision would permanently establish the premium rate at 25 percent of program costs for aged beneficiaries.

*Effective Date*

January 1, 1985.

*Estimated Savings*

Fiscal years:	Millions
1984 .....	0
1985 .....	0
1986 .....	\$384
1987 .....	884
4-year total.....	\$1,268

**2. One-Month Delay In Medicare Entitlement (sec. 902 of the bill)***Present Law*

Under current law, eligibility for Medicare begins on the first day of the month in which an individual reaches age 65. As a result, Medicare often pays benefits for services that were provided before an individual reaches his 65th birthday.

*Explanation of Provision*

The provision defers eligibility for parts A and B of Medicare until the first day of the month following the month the individual attains age 65.

The Committee believes that current private health benefits coverage can be extended to protect the large majority of people during the month in which they reach age 65. The Committee is concerned however that some people could find themselves with gaps in protection as a result of the provision. The Committee believes that State insurance authorities, which are the responsible governmental authorities for regulating private insurance contract provisions, will take such steps as may be necessary to assure that private policies will be amended or adjusted to assure continuity of coverage under such plans until Medicare coverage begins. The Committee also notes that Medicaid coverage will continue to be available to needy aged individuals during the month before their Medicare coverage will begin.

The Committee directs the Secretary of HHS to make all reasonable efforts to inform individuals in advance of the date their Medicare coverage begins, and, to the extent feasible, make sure that these people do not suffer undue hardships as a result of the deferral of Medicare eligibility.

*Effective Date*

January 1, 1985.

*Estimated Savings*

Fiscal years:	Millions
1984 .....	0
1985 .....	\$145
1986 .....	230
1987 .....	255
4-year total.....	\$630

### 3. Modification of Working Aged Provision (sec. 903 of the bill)

#### *Present Law*

The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) changed the Medicare benefits for the working aged. As of January 1, 1983, if the beneficiary so elects, Medicare benefits became secondary to benefits under an employer group health plan for employed individuals between the ages of 65 and 69. This provision applies to spouses only when both the employee and spouse are covered by an employer group health plan and both are between the ages of 65 and 69.

TEFRA does not allow Medicare to be the secondary payer if a beneficiary age 65 through 69 has a spouse under age 65 who is working and has an employer group health plan.

#### *Explanation of Provision*

The provision would modify both title XVIII and the Age Discrimination in Employment Act (ADEA) so as to eliminate the lower age limit for the working spouse. Under the provision a non-working spouse aged 65 to 69 may elect primary coverage under the working spouse's employer group health plan even though the working spouse is not yet 65 years of age. If such an election is made, Medicare would become the secondary payer.

As modified the ADEA would require that any employer must provide that any employee's spouse aged 65 through 69 shall be entitled to coverage under any group health plan offered to such employee under the same conditions as any employee and the spouse of such employee under age 65.

#### *Effective Date*

January 1, 1985.

#### *Estimated Savings*

Fiscal years:	Millions
1984 .....	0
1985 .....	\$260
1986 .....	380
1987 .....	415
4-year total .....	\$1,055

### 4. Limitation on Physician Fee Prevailing and Customary Charge Levels; Participating Physician Incentives (sec. 904 of the bill)

#### *Present Law*

Under current law, Medicare pays for physician services on the basis of Medicare-determined "reasonable charges." "Reasonable charges" are the lesser of: a physician's actual charges, the customary charges made by an individual physician for specific services, or the prevailing level of charges made by other physicians for specific services in a geographic area. The amounts recognized by Medicare as customary and prevailing charges are updated annually (on July 1) to reflect changes in physician charging practices. In-



creases in prevailing charge levels are limited by an economic index which reflects changes in the operating expenses of physicians and earnings levels in general. The economic index limit promulgated for the period July 1, 1983 through June 30, 1984 represents an increase of 5.85 percent over the index utilized for the previous 12-month period.

### *S. 2062*

The bill provided that the prevailing charge level which was in effect prior to the annual updating which occurred on July 1, 1983 would be utilized for the December 1, 1983-June 30, 1984 period. Thus, for this seven month period until July 1, 1984, prevailing charge limits for all physician service would have reverted to the levels applicable during the July 1, 1982-June 30, 1983 fee screen year. Physicians' customary charge screens would not have been affected by the rollback.

### *Modified Provision*

The provision would freeze all customary and prevailing fees for physician services one year beginning July 1, 1984. The freeze would be continued for an additional year for the prevailing fees of physicians who are not willing to accept assignment on all Medicare claims. No catch-up would be permitted for fees which were frozen.

In conjunction with the freeze, a voluntary participating system would be established for Medicare, similar to the participation physician agreements successfully used by some Blue Shield plans in their private business. Under a physician participating system, physicians would sign an agreement indicating their willingness to accept assignment for all services provided to all Medicare patients for the following fee screen year (July 1, 1985 to June 30, 1986). By agreeing to accept assignment in advance for all services for all Medicare patients, the physician would agree to accept the Medicare determined allowance as payment in full except for cost-sharing amounts. The physician would bill the carrier directly and receive payment from the carrier.

The current assignment system would remain for physicians who did not voluntarily sign a participation agreement, i.e., nonparticipating physicians could continue to accept assignment on a claim-by-claim basis. As under the current system, assignment must be accepted for joint Medicaid-Medicare eligibles.

A voluntary participation physician system would allow Medicare beneficiaries to better predict out-of-pocket expenses since, as noted below, they would know in advance which physicians participate (i.e., always accept assignment). A voluntary system would not compel any physician to participate and the current claim-by-claim assignment system would be preserved for non-participating physicians.

Several incentives would be used to encourage physician participation. These include:

(1) Physician and Supplier List.—Similar to the provision already agreed to by the Committee, one incentive would require that lists of physicians and suppliers be published containing the name, ad-



dress, phone number, specialty and an indication of volume of assigned versus total Medicare claims or reimbursements in the previous year for each physician and supplier. Low-volume physicians or supplies could be excluded from the list. In the case of physicians who practice solely as staff members of a health maintenance organization or other similar associations, the Secretary may choose to list the name of the organization and its Medicare assignment data information.

These lists would be published annually with carrier discretion as to the appropriate geographic level to make them most meaningful for beneficiary use. A check stuffer would be sent to all Medicare beneficiaries notifying them about the availability of the lists. The lists would be provided to senior citizen groups and would be made available for beneficiaries to review at both carrier and Social Security District and Branch offices. The Secretary would be directed to make arrangements to make such lists available for purchase by organizations and individuals. In addition to this list there would also be prepared a directory containing the names of only those physicians and suppliers who agree to be "participating" physicians and suppliers.

(2) Toll-free hot lines.—The system of toll-free hot-lines already in place at the carriers would be expanded. Carriers would hire additional staff to (a) provide names, addresses, phone numbers and specialties of participating physicians and suppliers, and (b) confirm whether specified physicians participated.

(3) Electronic Billing Transmission Lines.—Currently about 13 percent of Medicare claims are transmitted to carriers by a variety of electronic/automatic mechanisms, including tape-to-tape, floppy disks, etc. As an incentive to become a participating physician, carriers could establish direct lines for the electronic receipt of claims from participating physicians. Non-participating physicians would be permitted to continue to transmit claims electronically.

(4) For beneficiaries with approved Medigap coverage, or with group health insurance plans which serve as Medigap policies, two simplified billing/payment arrangements would be available. Carriers could use either or both.

(a) Piggyback Billing.—Under this arrangement, the physician or supplier submits one bill to the carrier. The carrier pays the physician or supplier the Medicare reimbursement and then sends willing Medigap insurers information on the amount paid. The Medigap insurer would automatically pay the physician or supplier for the beneficiary's cost-sharing liabilities. The physician or supplier would not need to submit a separate bill to the beneficiary or the Medigap plan for the cost-sharing and the beneficiary would be removed from the paperwork payment process. In order to avail itself of this option, the supplemental plan would have had to provide its eligibility file to the carrier. To the extent feasible, Medicaid could also make use of piggyback billing.

(b) Payment to organizations.—Under this arrangement, the participating physician or supplier would submit one bill to the Medigap insurer. The Medigap insurer would pay the physician or supplier an amount which the physician or supplier accepts as payment-in-full, including cost-sharing liabilities. (The Medigap plan may pay the physician or supplier more than the Medicare reason-

able charge.) The Medigap plan would then collect the reasonable charge from Medicare. Only one bill would be submitted by the physician or supplier and one check would be paid to the physician or supplier. The beneficiary would not be responsible for paying the physician or supplier or collecting from the Medicare carrier or the Medigap plan.

### *Effective Date*

July 1, 1984.

### *Estimated Savings*

Fiscal years:	Millions
1984 .....	\$40
1985 .....	750
1986 .....	910
1987 .....	1,070
4-year total .....	\$2,770

## **5. Limitation on Increase in Hospital Costs per Case (sec. 905 of the bill)**

### *Present Law*

The "Tax Equity and Fiscal Responsibility Act of 1982" (Public Law 97-248, commonly referred to as TEFRA) expanded previously existing limits on Medicare costs effective October 1, 1982. Among other things, it established a 3-year target rate reimbursement system which in effect limited allowable rates of increase in Medicare payments per case over the fiscal year 1983-1985 period. The target rate is equal to the previous year's allowable operating costs per case (or after the first year, the previous year's target amount) increased by the percentage increase in the hospital wage and price index (market basket) plus one percentage point. Penalties and bonuses were established for hospitals, with costs above and below the target.

The "Social Security Amendments of 1983" (Public Law 98-21) provides for the establishment of a prospective payment system for hospitals to be phased-in over a 3-year period. During the transitional period a portion of a hospital's payments will be based on prospective rates and a portion on each hospital's own cost base. The cost-based portion of the payment will be calculated on the basis of reasonable costs, subject to the existing rate of increase limits, without the penalties and bonuses established under TEFRA.

In addition, under current law the rates for each DRG, like the cost-based costs per case, are derived from historical Medicare cost data for each hospital. For fiscal years 1984 and 1985, payment amounts from the previous fiscal years would be increased by the market basket, plus one percentage point. For fiscal years beginning on or after October 1, 1986, the rate of increase is left to the discretion of the Secretary.

### *Explanation of Provision*

The provision would, for two years, (fiscal years 1985 and 1986), limit the rate of increase in the hospital cost portion of the payment amounts to the market basket minus one-half percentage point. The rate of increase in the DRG portion of the payment amounts would be limited during the same two years to the market basket plus one-half percentage point. Exempted hospitals and hospital units would be subject to similar rate of increase limitations applicable to their costs . . . (MB - ½ and MB + ½) in the same proportion as hospitals under the prospective payment system with the same accounting years. This would result in a rate of increase for exempted hospitals of MB in the first year and MB + ¼ in the second year.

### *Effective Date*

Accounting years beginning on or after October 1, 1984 and before October 1, 1986.

### *Estimated Savings*

Fiscal year:	Millions
1984 .....	0
1985 .....	\$190
1986 .....	430
1987 .....	460
4-year total .....	\$1,080

## **6. Fee Schedule for Clinical Laboratory Services (sec. 906 of the bill)**

Under current law, outpatient diagnostic laboratory services are reimbursed on the basis of reasonable charges when furnished by an independent laboratory or by a physician. Payment for such services to hospital outpatients is on the basis of reasonable cost. These laboratory services are covered under part B of the Medicare program; thus, the beneficiary is subject to the part B deductible and coinsurance requirements.

### *S. 2062*

The bill would establish fee schedules for all laboratory services other than hospital-based laboratory services. Payments would be based on a fee schedule unless the actual charge is lower. The schedule would be established for two years for areas to be designated by the Secretary.

The initial payment level for each fee schedule would have been established at 65% of prevailing charges in the area for the fee screen year beginning July 1, 1983. The Secretary would be required to adjust the fee schedules annually to reflect changes in the Consumer Price Index for all Urban Consumers (U.S. city average).

All clinical laboratories would have been required to bill the Medicare program or beneficiaries directly, for the tests they perform rather than billing the physician who ordered the tests (laboratories performing tests "under arrangement" with a hospital



could continue to bill the hospital for hospital outpatients). Physicians would be permitted to bill for clinical laboratory services only when the physician directly provides, or supervises the provision of, clinical laboratory services.

The bill provided that acceptance of assignment for the performance of laboratory services is optional for both clinical laboratories and physicians. Where either accepts assignment, reimbursement would be made at 100 percent of the fee schedule amount (or, if lower, the billed charge), with the deductible and coinsurance waived.

Laboratories and physicians not accepting assignment would have continued to be reimbursed at 80 percent of the fee schedule amount or if lower, 80 percent of the billed charge; applicable deductible and coinsurance amounts would continue to apply.

The bill directed the Secretary to simplify current billing requirements for laboratory services.

The bill further required the Secretary to report to the Congress by June 30, 1985 on the appropriate treatment of hospital-based laboratories, direct payment of all lab fees to physicians, the basis for the formulation of a nationwide fee schedule, and an appropriate indexing mechanism for such a schedule.

### *Modified Provision*

The provision requires the establishment of a fee schedule for all noninpatient laboratory services, including those furnished by hospital outpatient departments. The level of payment would be set at 60 percent of the prevailing charge levels (applicable during the fee screen year beginning July 1, 1983) for services provided by independent labs and in physicians' offices. The level of payment for hospital-based labs would be set at 62 percent of these prevailing charge levels.

These fee schedules would be in effect from May 1, 1984 until September 30, 1987.

Under the provision, the Secretary may make adjustments or exceptions to the fee schedule to assure adequate reimbursement of: (1) emergency laboratory tests needed for the provision of bona fide emergency services in a hospital emergency room; and (2) certain low volume high-cost tests where highly sophisticated equipment and extremely skilled personnel are necessary to assure quality.

The other provisions previously contained in S. 2062 relating to assignment and billing requirements would be retained as would the requirement that the Secretary report to the Congress. However, the provision makes permanent the requirement that only those actually performing the tests or supervising the tests bill the program. In the case of an unassigned claim the beneficiary may continue to submit the bill.

### *Effective Date*

May 1, 1984.

### *Estimated Savings*

Fiscal year:	Millions
1984 .....	\$70
1985 .....	255

1986 .....	320
1987 .....	400
4-year total .....	\$1,045

## 7. Revaluation of Assets (sec. 907 of the bill)

### *Present Law*

Medicare currently reimburses hospitals for their capital-related costs, including depreciation costs and interest. Investor-owned hospitals also receive a return on equity.

When hospitals are sold, their assets are often revalued, thereby increasing reimbursement for these capital-related costs.

### *Explanation of Provision*

The provision would limit any increase in capital-related cost reimbursement to a new owner that would result from the revaluation of hospital assets acquired in fiscal year 1985 and thereafter. The capital-related cost of the new owner would be based on the acquisition cost of the asset as entered on the books of the prior owner less any depreciation taken on the asset by the prior owner. In addition, the new owner's capital-related costs must be determined using the same useful life and method of depreciation as used by the prior owner for reimbursement under the Medicare program.

### *Effective Date*

Acquisitions made on or after October 1, 1984.

### *Estimated Savings*

Fiscal year:	Millions
1984 .....	0
1985 .....	\$50
1986 .....	110
1987 .....	170
4-year total .....	\$330

## 8. Repeal of Preadmission Diagnostic Testing Provision (sec. 908 of the bill)

### *Present Law*

The Omnibus Reconciliation Act of 1980 (Section 932 and 942) authorized 100 percent Part B reimbursement (on a reasonable cost or charge basis) for preadmission diagnostic testing, either in a hospital's outpatient department or in a physician's office, within seven days prior to a hospital admission. This provision was intended to encourage preadmission testing and shorten hospital stays, thus decreasing overall Medicare payments.

The final regulation implementing 100 percent reimbursement for preadmission testing in hospital outpatient departments was not published because of subsequent hospital reimbursement



changes in the Social Security Amendments of 1983. (The regulation covering physician's offices has not been developed.)

### *Explanation of Provision*

The provision would repeal the provision providing for 100 percent reimbursement and simply pay for these services on the same basis as all other services under part B (80 percent).

The Committee believes that given the incentives created by the new prospective payment system, hospitals already have every reason to do their testing on an outpatient basis.

### *Effective Date*

Enactment.

## **9. Skilled Nursing Facility Reimbursement (sec. 909 of the bill)**

### *Present Law*

The Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248) required the Secretary to establish a single payment limit for both freestanding and hospital-based skilled nursing facilities (SNFs), effective October 1, 1982. Prior to that time, separate limits were established for these two types of facilities in recognition of the fact that the operating costs of hospital-based facilities were typically much higher than those of the freestanding facilities.

In the Social Security Amendments of 1983 (P.L. 98-21), the effective date of the single-limit requirement was postponed for one year. In addition, the Congress required the Secretary to report by December 31, 1983 on the effect of the implementation of the TEFRA single-rate provision on hospital-based SNFs, given the difference (if any) in the patient populations served by such facilities and by freestanding SNFs. Further, the Secretary was required to report by the end of 1983 on the impact of hospital prospective payment on SNFs.

### *S. 2062*

The bill postponed implementation of the single rate for SNFs until April 1, 1984. The Committee believed it prudent to wait until the Secretary completed the report on hospital-based SNFs before implementing the single-rate provision.

### *Modified Provision*

(1) For fiscal year 1983 and until July 1, 1984, hospital based facilities and freestanding facilities would be paid on the basis of the policy for calculating reimbursement limits that had been in effect prior to the passage of TEFRA. Under this system, the limits for freestanding facilities would be set at 112 percent of the average per diem operating costs for urban and rural facilities, respectively. The limits for hospital-based facilities would similarly be set at 112 percent of the average per diem operating cost for urban and rural hospital based facilities, respectively.

(2) Effective July 1, 1984 and thereafter, the Secretary would establish dual limits for hospital-based and freestanding SNFs on a

somewhat different basis. Separate limits would continue to be established for freestanding facilities in urban and rural areas at 112 percent of the mean operating costs of urban and rural freestanding facilities, respectively. However, limits for urban or rural hospital-based facilities would be set at the appropriate freestanding facility limit plus 50 percent of the difference between the freestanding facility limit and 112 percent of mean operating costs for hospital-based facilities. Cost differences between hospital-based and free-standing facilities attributable to excess overhead allocations resulting from medicare reimbursement principles shall be recognized as an add-on to the limit. Adjustments would be made to take account of differences in wage levels prevailing in a facilities area.

Under this provision, both hospital-based and freestanding facilities could continue to apply for and receive exceptions from the cost limits in circumstances where high costs result from more severe than average case mix or circumstances beyond the control of the facility. Indicators of more severe casemix include a comparatively high proportion of Medicare days to total patient days, comparatively high ancillary costs, or relatively low average length of stay for all patients (an indicator of the rehabilitative orientation of the facility). Facilities eligible for exceptions could receive, where justified, up to all of their reasonable costs.

(3) The Secretary shall forward to the Congress, no later than April 15, 1984, the final report on skilled nursing facilities as required by TEFRA.

(4) The Secretary shall submit, no later than December 1, 1984, a proposal for implementation of a prospective payment system for skilled nursing care under Part A. Such payment system shall take into account case mix differences between providers. Such a system should also be designed so as to permit the inclusion of payments into the payments currently made to hospitals under the DRG system. The proposal shall be drafted so as to be implementable as of October 1, 1985.

### *Effective Date*

October 1, 1983.

### *Estimated Cost*

Fiscal year:	Millions
1984 .....	\$20
1985 .....	30
1986 .....	35
1987 .....	40
4-year total.....	\$125

## **10. Rounding of Part B Payments (sec. 910 of the bill)**

### *Present Law*

The Omnibus Budget Reconciliation Act of 1981 authorized the Social Security Administration (SSA) to round to the next lower whole dollar payments made after July 31, 1981 to beneficiaries of Title II of the Social Security Act (Federal Old Age, Survivors and Disability Insurance).

The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) expanded the use of the "round-down" concept to two other programs administered by SSA. Under the Aid to Families with Dependent Children (AFDC) program, States are required to round both their AFDC need standard and actual monthly benefit amounts to the next lower whole dollar. Under the Supplemental Security Income (SSI) program, both the monthly benefit and income eligibility amounts are to be rounded to the next lower whole dollar.

Neither the Omnibus Budget Reconciliation Act nor TEFRA incorporated the "round-down" concept into Medicare reimbursement. Medicare carriers continue to compute payments to physicians and suppliers, or beneficiaries in the case of unassigned claims, to the nearest penny.

### *Explanation of Provision*

The provision would require Medicare part B charge based payments on claims that are not whole dollar amounts to be rounded down to the next lower dollar. Physicians and suppliers accepting assignment could not bill the beneficiary for amounts lost through rounding.

### *Effective Date*

July 1, 1984.

### *Estimated Savings*

Fiscal year:	Millions
1984 .....	\$15
1985 .....	65
1986 .....	70
1987 .....	75
4-year total .....	\$225

## **11. Agreements for Medicare Claims Processing (sec. 911 of the bill)**

### *Present Law*

Under current law, Medicare contracts with intermediaries and carriers to perform the day-to-day operational work of the program including reviewing claims and making program payments.

### *Explanation of Provision*

The provision would increase the Secretary's discretion in entering into agreements for Medicare claims processing by (1) eliminating the right of providers of services to nominate intermediaries, (2) permitting the Secretary to enter into various kinds of agreements, not solely those based on cost, and (3) broadening the Secretary's authority to experiment with different kinds of contracts by including contracts other than fixed price or performance incentive contracts and by permitting waiver of competitive bidding requirements. The provision also allows the Secretary to provide for publi-



cation of the standards for contractors through normal administrative issuances rather than through the regulatory process.

*Effective Date*

October 1, 1984.

*Estimated Savings*

Fiscal year:	Millions
1984 .....	0
1985 .....	\$15
1986 .....	25
1987 .....	35
4-year total .....	\$75

**12. Lesser of Cost or Charges (sec. 912 of the bill)**

*Present Law*

Current law includes provisions for Medicare to pay providers the lesser of costs or charges (LCC). These provisions were adopted (before hospital prospective payment) to assure that Medicare would not pay providers more than the amounts paid by the general public. HCFA regulations allow hospitals to calculate the amount of their costs and charges in the aggregate for inpatient and outpatient services. This policy has the effect of permitting hospitals with low outpatient charges to nevertheless receive their full costs from Medicare by adding in their typically above-cost inpatient charges.

*Explanation of Provision*

The provision would require the Secretary to issue regulations to isolate the calculation of the lesser of costs or charges for outpatient services from the calculation for inpatient services.

*Effective Date*

Accounting periods beginning on or after October 1, 1984.

*Estimated Savings*

Fiscal year:	Millions
1984 .....	0
1985 .....	\$80
1986 .....	90
1987 .....	105
4-year total .....	\$275

**13. Hepatitis B Vaccine (sec. 913 of the bill)**

(Contained in S. 2062 as originally reported)

*Present Law*

Present law precludes Medicare coverage of immunizations and vaccines with the exception of the pneumococcal vaccine. Therefore, the program does not cover immunizations against viral hepa-

titis, and infectious disease that produces acute and chronic inflammation of the liver which may lead to serious illness or death.

End stage renal disease (ESRD) patients are currently monitored by monthly testing for the virus, and these tests are covered and paid for under Medicare.

### *Explanation of Provision*

The provision covers Hepatitis B vaccine under Medicare for ESRD hemodialysis patients.

The Committee has given the Secretary the flexibility to develop a payment method that may be different from the usual Medicare reimbursement rules. In developing such a payment system, the Committee believes that any payment system should provide a payment amount which reasonably reflects the cost of efficiently providing and administering the vaccine. We would also recommend that the Secretary revise coverage guidelines with respect to the frequency of Hepatitis B testing for successfully immunized patients.

### *Effective Date*

July 1, 1984.

### *Estimated Savings*

Fiscal year:	Millions
1984 .....	—\$3
1985 .....	1
1986 .....	2
1987 .....	2
4-year total .....	\$2

## **14. Limitation on Certain Foot Care Services (sec. 914 of the bill)**

(Contained in S. 2062 as originally reported)

### *Present Law*

Routine foot care is not covered under the Medicare program; however, Medicare does allow reimbursement to physicians for debridement of mycotic toenails (toenails with fungal infection) which should not be performed by a nonprofessional.

There has been considerable concern regarding the frequency with which this procedure is taking place. The Health and Human Services Inspector General conducted a review in Virginia and concluded that this benefit was being abused because the procedure was being performed more frequently than necessary and was being performed on patients (particularly nursing home patients) who did not require professional care.

### *Explanation of Provision*

The provision would require the Secretary to issue regulations establishing coverage guidelines under the Medicare program for debridement of mycotic toenails. Unless the Secretary determines otherwise, no payment would be made for such services where per-



formed more frequently than once every 60 days. Exceptions could be authorized if medical necessity were documented by the physician.

### *Effective Date*

Services furnished on or after enactment.

### *Estimated Savings*

Fiscal year:	Millions
1984 .....	\$5
1985 .....	11
1986 .....	11
1987 .....	12
4-year total .....	\$39

## **15. Coverage of Hemophilia Clotting Factor (sec. 915 of the bill)**

(Contained in S. 2062 as originally reported)

### *Present Law*

Present law excludes coverage of drugs and biologicals unless they are of the type that cannot be self-administered and are commonly furnished incident to physicians services.

Hemophilia is a life-long disease in which a patient whose blood lacks a clotting factor is subject to spontaneous hemorrhages. In the past 13 years hemophilia patients have had the benefit of a human blood derived concentrate which, when infused, induces the blood to clot, and when appropriately given in advance may prevent bleeding.

The hemophilia clotting factor is considered to be a biological under Medicare and is covered when provided by a physician to a patient, on either an inpatient or outpatient basis.

### *Explanation of Provision*

The provision would permit Medicare coverage for the supplies and products necessary for the self-administration of the clotting factor, subject to utilization controls deemed necessary by the Secretary for the efficient use of the factors.

### *Effective Date*

Items and services purchased on or after enactment.

### *Estimated Savings*

Negligible.

## **16. Indexing of Part B Deductible (sec. 916 of the bill)**

(Contained in S. 2062 as originally reported)

### *Present Law*

Under present law, enrollees in the Supplementary Medical Insurance (or Part B) portion of Medicare must pay the first \$75 of

covered expenses (known as the deductible) each year before any benefits are paid. The amount of this deductible is fixed by law.

### *Explanation of Provision*

The provision would index the amount of the Part B deductible for 3 years beginning in calendar year 1985, by the percentage by which the Medicare economic index increases each year. The Medicare economic index is the index used to limit increases in the prevailing level of physician fees reimbursable under the Part B program. It is estimated that the deductible would increase to \$78 in calendar year 1985, \$82 in calendar year 1986, and \$86 in calendar year 1987, and then remain at that level.

### *Effective Date*

January 1, 1985.

### *Estimated Savings*

Fiscal year:	Millions
1984 .....	0
1985 .....	\$35
1986 .....	90
1987 .....	100
4-year total .....	\$225

## **17. Cost Sharing for Durable Medical Equipment Furnished as a Home Health Benefit (sec. 917 of the bill)**

(Contained in S. 2062 as originally reported)

### *Present Law*

Under present law, when covered durable medical equipment (DME) is furnished to an outpatient by a supplier of services or by an institutional provider, payment is made under the Part B program on the basis of 80 percent of the reasonable charges or 80 percent of the reasonable costs, with one exception. If the equipment is furnished by a home health agency, payment is made on the basis of 100 percent of the reasonable cost.

### *Explanation of Provision*

The provision would reimburse home health agencies for durable medical equipment at 80 percent of reasonable cost and as in the case of other providers and suppliers, permit the agencies to bill beneficiaries for the remaining 20 percent.

### *Effective Date*

Items or services furnished on or after enactment.

### *Estimated Savings*

Fiscal year:	Millions
1984 .....	\$10
1985 .....	20
1986 .....	25
1987 .....	25
4-year total .....	\$80

## 18. Extension of Medicaid Payment Reductions and Offsets (sec. 921 of the bill)

### *Present Law*

Public Law 97-35 provided that whatever Federal matching payments a State is otherwise entitled to are to be reduced by 3 percent in fiscal year 1982, 4 percent in fiscal year 1983, and 4.5 percent in fiscal year 1984. A State may qualify for a percentage point offset to these reductions of up to 3 percent if it has a qualified hospital cost review program, an unemployment rate which exceeds 150 percent of the national average, or fraud and abuse recoveries greater than one percent of Federal expenditures. In addition States may earn back part or all of the reductions if expenditures remain below specific target amounts.

### *Explanation of Provision*

This provision would extend the existing reduction and offset provisions for 3 years. The reduction rate would be 3 percent for fiscal years 1985, 1986 and 1987. Moreover, for the purpose of determining the amount of payments under subsection 1903(s)(1)(A) that a State is otherwise entitled to receive for a given fiscal year, interest paid under subsections 1903(d)(2) and 1903(d)(5) and adjustments under section 1128A are to be excluded under certain circumstances.

### *Effective Date*

October 1, 1984.

### *Estimated Savings*

Fiscal year:	Millions
1984.....	0
1985.....	\$562
1986.....	353
1987.....	432
4-year total.....	\$1,347

## 19. Mandatory Assignment of Rights of Payment by Medicaid Recipients (sec. 922 of the bill)

### *Present Law*

States are now permitted to require Medicaid applicants to assign to the State their rights to medical support and third party payments for medical care. Approximately 25 States have taken advantage of this provision.

### *Explanation of Provision*

This provision would mandate that States require Medicaid applicants to assign to the State their rights to third party payments as a condition of eligibility.

*Effective Date*

October 1, 1984. A later implementation date is permitted when State legislation is required.

*Estimated Savings*

Fiscal year:	Millions
1984 .....	0
1985 .....	\$7
1986 .....	7
1987 .....	8
4-year total.....	\$22

**20. Increase in Medicaid Ceiling Amount for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa (sec. 923 of the bill)**

(Contained in S. 2062 as originally reported)

*Present Law*

Current law authorizes participation of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa in the Medicaid program. It sets the Federal matching rate for these jurisdictions at 50% and provides for annual ceilings on such payments of \$45 million for Puerto Rico, \$1.5 million for the Virgin Islands, \$1.4 million for Guam, \$350,000 for the Northern Mariana Islands, and \$750,000 for American Samoa.

*Explanation of Provision*

The provision would increase the annual dollar ceilings on Federal payments to these jurisdictions. The new ceilings would be \$63.4 million for Puerto Rico, \$2.1 million for the Virgin Islands, \$2.0 million for Guam, \$550,000 for the Northern Mariana Islands, and \$1,150,000 for American Samoa.

*Effective Date*

October 1, 1983.

*Estimated Cost*

Fiscal year:	Millions
1984 .....	\$20
1985 .....	20
1986 .....	20
1987 .....	20
4-year total.....	\$80



## 21. Increase Authorization for Maternal and Child Health Block Grant Program (sec. 924 of the bill)

(Contained in S. 2062 as originally reported)

### *Present Law*

The present law authorizes \$373 million for the Maternal and Child Health (MCH) Block grant program. Congress appropriated an additional \$105 million for the program in fiscal year 1983 under Public Law 98-8 and an additional \$26 million in fiscal year 1984.

### *Explanation of Provision*

The provision would permanently increase the authorization level for the MCH block grant program. The level would be increased to \$452 million in fiscal year 1984, \$453 million in fiscal year 1985, and \$455 million in fiscal year 1986 and thereafter.

### *Effective Date*

October 1, 1983.

### *Estimated Cost*

Fiscal year:	Millions
1984 .....	\$33
1985 .....	30
1986 .....	12
1987 .....	- 14
4-year total .....	\$61

## 22. Medicaid Coverage for Pregnant Women (sec. 925 of the bill)

(Contained in S. 2062 as originally reported)

### *Present Law*

Prior to the enactment of the "Omnibus Budget Reconciliation Act of 1981" (Public Law 97-35) States were permitted to allow pregnant women to qualify for AFDC payments on the basis of their unborn children. Pregnant women who are entitled to AFDC cash payments on this basis were also entitled to Medicaid coverage. Public Law 97-35 prohibited States from making AFDC cash payments to a pregnant woman on the basis of her unborn child until the sixth month of pregnancy. However, States are permitted to extend Medicaid eligibility to these women from the time the pregnancy has been medically verified. An estimated 80 percent of the States and jurisdictions have elected to provide Medicaid coverage to a pregnant woman on the basis of her unborn child for either all or a portion of her pregnancy.

### *Explanation of Provision*

The provision would mandate States to provide Medicaid coverage beginning with the medical determination of pregnancy to



every woman who would be eligible for AFDC if the child were born.

### *Effective Date*

July 1, 1984. A later implementation date is permitted when State legislation is required.

### *Estimated Cost*

Fiscal year:	Millions
1984 .....	\$4
1985 .....	11
1986 .....	12
1987 .....	13
4-year total .....	\$40

## **23. Recertification of SNF/ICF Patients (sec. 926 of the bill)**

(Contained in S. 2062 as originally reported)

### *a. Present Law*

Under current Medicaid law, a State's evidence of a satisfactory program of controls over utilization must include evidence that physicians recertify the need for continuing skilled nursing facility (SNF) and intermediate care facility (ICF) services every 60 days. However, there is evidence that less frequent recertification may be more appropriate in the case of long term intermediate care facility stays.

### *Explanation of Provision*

The provision would modify the current physician recertification schedule. For skilled nursing facilities the following schedule would be established:

- 30 days after initial admittance;
- 60 days after initial admittance;
- 90 days after initial admittance;
- 60-day intervals thereafter.

For intermediate care facilities, the following schedule would be established:

- 60 days after initial admittance;
- 120 days after initial admittance;
- 12 months after initial admittance;
- 18 months after initial admittance;
- 24 months after initial admittance;
- 1-year intervals thereafter.

### *b. Present Law*

Current law requires 100 percent on-time compliance with physician recertification requirements.

### *Explanation of Provision*

The provision permits a ten day grace period if a State demonstrates good cause for physicians not meeting the deadline.

### *c. Present Law*

By law, the quarterly Federal penalty imposed on States for failure to have an adequate program of controls over utilization is equal to  $33\frac{1}{3}$  percent multiplied by a ratio of all Medicaid patients in facilities with one or more surveyed records out of compliance to all Medicaid patients in those types of facilities.

### *Explanation of Provision*

The provision would modify the existing formula by substituting 5 percent for the existing  $33\frac{1}{3}$  percent figure. Further, the provision would specify that no penalty would be imposed in cases where the total number of patients whose records were surveyed and found out of compliance is less than 3 percent of the total number of patients included in the survey.

### *Effective Date*

Quarters beginning on or after enactment.

### *Estimated Savings*

Fiscal year:	Millions
1984 .....	\$3
1985 .....	4
1986 .....	0
1987 .....	-1
4-year total.....	\$6

## **24. Study of Physician Reimbursement for Cognitive Services (sec. 931 of the bill)**

(Contained in S. 2062 as originally reported)

### *Present Law*

Medicare payments to physicians are made on the basis of reasonable charges for specific services. There is concern that the existing payment methodology may result in payment imbalances between various physician specialties, types of procedures, and health care settings. The current reimbursement system rewards physicians for their technical skills and for the performance of certain activities such as surgery or diagnostic tests. As a result, there is concern that the system discourages physicians from spending time with patients to counsel or examine them.

### *Explanation of Provision*

The provision directs the Office of Technology Assessment, in consultation with appropriate physician organizations and the Secretary, to conduct a study examining any imbalance in payments to physicians for their cognitive vs. their technical services. It is the desire of the Committee that the OTA study results include specific recommendations on ways to modify the existing system for determining Medicare allowances to eliminate any inequities that exist between reimbursement levels for medical procedures and cognitive services.

OTA is also directed to include specific findings and recommendations on creating a means to adjust allowances to physicians as the costs and risks to physicians, which result from new technologies and procedures, decrease over time. The provision requires submission of the report to Congress by December 31, 1985.

### *Effective Date*

Enactment.

## **25. Elimination of Part B Deductible for Certain Diagnostic Laboratory Tests (sec. 932 of the bill)**

(Contained in S. 2062 as originally reported)

### *Present Law*

Present law authorizes the Secretary to negotiate with a laboratory a payment rate that is considered the full charge for diagnostic tests. The payment, which is made directly to the laboratory, equals 100 percent of the negotiated rate subject to the annual Part B deductible. The beneficiary is not liable for the 20-percent coinsurance payment that usually is applicable.

### *Explanation of Provision*

The provision eliminates application of the annual Part B deductible in the case of diagnostic tests performed in a laboratory which has entered into a negotiated rate agreement with the Secretary. Should the fee schedule provision proposed in a separate section of this bill not be extended beyond September 30, 1987, this provision would then provide an incentive for laboratories to enter into such agreements and thereby reduce costs associated with individual billing of Medicare beneficiaries.

### *Effective Date*

Diagnostic tests performed on or after September 30, 1987.

## **26. Payment for Services Following Termination of Participation Agreements With Home Health Agencies and Hospices (sec. 933 of the bill)**

(Contained in S. 2062 as originally reported)

### *Present Law*

Under current law, if Medicare participation of a home health agency or a hospice is terminated, the Secretary is required to continue to pay for services provided to a beneficiary until the end of the calendar year in which the termination took place. This requirement is only applicable to services provided under an individual plan of care established prior to the termination of the agency.

### *Explanation of Provision*

The provision changes from the end of the calendar year to 30 days after termination, the ending of coverage for services provided

under a plan established prior to the termination date of the participation agreement. This provision brings the treatment of home health agencies and hospices into conformity with the treatment of hospitals and skilled nursing facilities.

*Effective Date*

Enactment.

**27. Repeal of Special Tuberculosis Treatment Requirements Under Medicare and Medicaid (sec. 934 of the bill)**

(Contained in S. 2062 as originally reported)

*Present Law*

Present law contains a number of provisions intended to assure that institutional services provided to Medicare and Medicaid patients suffering from tuberculosis are not custodial in nature and that such treatment can reasonably be expected to improve the patient's condition or render the condition noncommunicable.

*Explanation of Provision*

The provision repeals the special provisions. Advances in the active treatment of tuberculosis make such safeguards against paying for custodial care for tuberculosis patients unnecessary. The provision also eliminates tuberculosis hospitals as a special provider category in the Medicare and Medicaid programs.

*Effective Date*

Enactment.

**28. Medicare Recovery Against Certain Third Parties (sec. 935 of the bill)**

(Contained in S. 2062 as originally reported)

*Present Law*

Under current law, the Medicare program may make payments for services for which other third party insurance programs (e.g., worker's compensation, auto or liability insurance, and employer health plans) are ultimately liable for some or all of the costs. However, the Secretary does not now have the right of subrogation to become a party to claims against other liable parties or to recover directly from such parties.

*Explanation of Provision*

The provision establishes the statutory right of Medicare to recover directly from a liable third party, on behalf of a beneficiary, if the beneficiary himself does not do so, and to pay the beneficiary or a health care provider or supplier on the beneficiary's behalf, pending recovery where such third party is not expected to pay promptly. These provisions are intended to improve the ability of



the Medicare program to obtain reimbursement to which it is entitled by law.

*Effective Date*

Enactment.

**29. Indirect Payment of Supplementary Medical Insurance Benefits (sec. 936 of the bill)**

(Contained in S. 2062 as originally reported)

*Present Law*

Current law does not, in general, permit Medicare Part B payments to be made to anyone other than a beneficiary or an entity providing services.

*Explanation of Provision*

The provision permits Part B payments to be made to a health benefits plan whose payment, in combination with the Medicare payment, is accepted by the physician or other supplier as payment in full. The purpose of this provision is to enable this indirect payment procedure to be available to non-group as well as group, health benefit plans such as those offered by employers, unions, insurance companies, and other organizations.

*Effective Date*

Enactment.

**30. Elimination of Health Insurance Benefits Advisory Council (sec. 937 of the bill)**

(Contained in S. 2062 as originally reported)

*Present Law*

Section 1867 of the Social Security Act provides for a 19 member panel of health experts (the Health Insurance Benefits Advisory Council or HIBAC) appointed by the Secretary to advise on matters of general policy with respect to the Medicare and Medicaid programs.

*Explanation of Provision*

The provision repeals Section 1867. HIBAC was very active in the early years of the Medicare program when regulations were first promulgated. As the Federal Government gained experience in administering the Medicare program, the Council's advisory functions with respect to regulations became less important. With passage of the Social Security Amendments of 1972, Public Law 92-603, the Council's authority to review regulations and recommend changes was specifically deleted, and its role limited to advice on matters of "general policy." At that same time its purview was extended to include the Medicaid program. However, HIBAC has not



been called upon to advise the Secretary since late in 1976, and there are currently no members.

*Effective Date*

Enactment.

**31. Confidentiality of Accreditation Surveys (sec. 938 of the bill)**

(Contained in S. 2062 as originally reported)

*Present Law*

Current law contains certain disclosure safeguards relating to survey information used by the Secretary in connection with the hospital certification process under Medicare. However, the law only specifically refers to surveys conducted by the Joint Commission on the Accreditation of Hospitals (JCAH).

*Explanation of Provision*

The provision extends the same disclosure protections given JCAH survey information to similar survey information provided to the Secretary by the American Osteopathic Association or other national accreditation organizations.

*Effective Date*

Enactment.

**32. Flexible Sanctions for Noncompliance With Requirements for End Stage Renal Disease (ESRD) Facilities (sec. 939 of the bill)**

(Contained in S. 2062 as originally reported)

*Present Law*

Current law and regulations provide for decertification of end-stage renal disease (ESRD) facilities that are not in complete compliance with Medicare program requirements.

*Explanation of Provision*

The provision allows the Secretary to apply intermediate sanctions, such as a graduated reduction of reimbursement, to ESRD facilities whose noncompliance does not jeopardize patient health or safety or justify decertification of such facilities. Noncompliance would, in these cases, deal primarily with administrative requirements. This provision makes the treatment of ESRD facilities comparable to the treatment of nursing homes which are out of compliance.

The Committee intends that the Secretary, in applying the sanctions, should take certain factors into account. When reviewing a facility's compliance with the nurse staffing requirements, consideration should be given to the economic situation of areas with exceedingly high unemployment rates. For example, an area may be unable to recruit nurses because of the difficulty in finding employment for the nurses' spouses. In addition, in the event that a free

standing facility functions as a sole community provider for dialysis services, care shall be taken to ensure that Medicare beneficiaries requiring inpatient services continue to have those services available in a reasonably accessible facility.

*Effective Date*

Enactment.

**33. Use of Additional Accrediting Organizations Under Medicare  
(sec. 940 of the bill)**

(Contained in S. 2062 as originally reported)

*Present Law*

Under current law, the Secretary has authority to rely on certain accrediting organizations in determining whether hospitals, skilled nursing facilities, home health agencies, ambulatory surgical centers and hospice programs meet Medicare requirements.

*Explanation of Provision*

The provision extends the Secretary's authority to permit reliance on such organizations in determining whether rural health clinics, laboratories, clinics, rehabilitation agencies, including outpatient rehabilitation facilities, and public health agencies meet Medicare requirements (and clarifies the Secretary's authority with respect to ambulatory surgical centers). The standards of an accrediting organization chosen must be at least equivalent to those of the Secretary, and it must have a satisfactory record of application of such standards.

*Effective Date*

Enactment.

**34. Repeal of Exclusion of For-Profit Organizations From  
Research and Demonstration Grants (sec. 941 of the bill)**

(Contained in S. 2062 as originally reported)

*Present Law*

Current law limits the awarding of grants (under sections 1110 of the Social Security Act and section 222(b) of the 1972 Medicare amendments) for the conduct of research and demonstrations to non-profit organizations. However, contracts are permitted to be awarded to both for-profit and non-profit organizations.

*Explanation of Provision*

The provision extends the research and demonstration grant authority to for-profit organizations.

*Effective Date*

Enactment.

### **35. Requirements for Medical Review and Independent Professional Review Under Medicaid (sec. 942 of the bill)**

(Contained in S. 2062 as originally reported)

#### ***Present Law***

Under current law, medical review requirements for skilled nursing facilities (SNFs) and independent professional review for intermediate care facilities (ICFs) under Medicaid both call for teams of physicians, registered nurses and other appropriate personnel to conduct virtually similar kinds of review.

#### ***Explanation of Provision***

The provision makes the State plan requirements for medical review consistent with the requirements for independent professional review thereby clarifying that there is no substantial statutory difference between review of SNFs and ICFs. The provision also corrects a technical error in present law to assure that Christian Science sanatoria are excluded from the revised medical review/independent professional review requirements.

#### ***Effective Date***

Enactment.

### **36. Flexibility in Setting Rates for Hospitals Furnishing Long-Term Care Services Under Medicaid (sec. 943 of the bill)**

(Contained in S. 2062 as originally reported)

#### ***Present Law***

Current law contains special requirements for the establishment of payment rates for hospitals furnishing skilled nursing or intermediate care facility services under Medicaid.

#### ***Explanation of Provision***

The provision deletes the requirements for setting payment rates for certain hospital-furnished long-term care. Under the provision such rates need only meet the general criteria applicable to rates for similar services provided by long-term care institutions to Medicaid recipients.

#### ***Effective Date***

Enactment.

### **37. Authority of the Secretary To Issue and Enforce Subpoenas Under Medicaid (sec. 944 of the bill)**

(Contained in S. 2062 as originally reported)

#### ***Present Law***

Current law authorizes the Secretary to issue and seek enforcement of subpoenas under Medicare to obtain information needed in

connection with hearings, investigations and other matters related to program fraud and abuse.

***Explanation of Provision***

The provision authorizes the Secretary to issue and seek enforcement of subpoenas under Medicaid to the same extent that he has authority under the Medicare program.

***Effective Date***

Enactment.

**38. Repeal of Authority for Payments To Promote Closing and Conversion of Underutilized Hospital Facilities (sec. 945 of the bill)**

(Contained in S. 2062 as originally reported)

***Present Law***

Section 2101 of the "Omnibus Budget Reconciliation Act of 1981" (Public Law 97-35) authorized the Secretary to make Medicare and Medicaid payments to cover capital and increased operating costs associated with the conversion or closing of underutilized hospital facilities. The provision, which has never been implemented, restricts the number of facilities which may receive these funds to no more than 50 prior to January 1, 1984.

***Explanation of Provision***

The provision repeals this section of current law.

***Effective Date***

Enactment.

**39. Presidential Appointment of and Pay Level for the Administrator of the Health Care Financing Administration (sec. 946 of the bill)**

(Contained in S. 2062 as originally reported)

***Present Law***

By law, the Administrator of the Health Care Financing Administration (HCFA) is in the Senior Executive Service and is appointed by the Secretary of Health and Human Services.

***Explanation of Provision***

The provision provides for the appointment of the Administrator of HCFA by the President, with the advice and consent of the Senate. The position and pay of the Administrator is increased to Level IV of the Executive Schedule.

***Effective Date***

Applies to appointments to the position made after enactment.



**40. Exclusion of Certain Entities Owned or Controlled by Individuals Convicted of Medicare- or Medicaid-Related Crimes (sec. 947 of the bill)**

(Contained in S. 2062 as originally reported)

***Present Law***

Current law authorizes the Secretary to bar from participation in Medicare (and to direct State agencies to bar from Medicaid) institutional providers in which a significant interest is held by a person convicted of program-related criminal offenses.

***Explanation of Provision***

The provision extends the Secretary's authority to also exclude from Medicare participation (and to direct State agencies to exclude from Medicaid participation) any entity or supplier of services in which a significant ownership or controlling interest is held by a person convicted of program related criminal offenses.

***Effective Date***

Enactment.

**41. Judicial Review of Provider Reimbursement Review Board Decisions (sec. 948 of the bill)**

(Contained in S. 2062 as originally reported)

***Present Law***

The "Social Security Amendments of 1983" (Public Law 98-21) permits groups of providers to bring action in the judicial district in which the largest number of them are located. Under prior law, group judicial appeals could only be made in the District Court for the District of Columbia. Public Law 98-21 also requires certain appeals by providers which are under common ownership or control to be made as a group.

These provisions were included in a section of Public Law 98-21 entitled "Conforming Amendments" and were not assigned a specific effective date. Therefore, these provisions together with most of the prospective payment provisions were given the following effective date, "apply to items and services furnished by . . . a hospital beginning with its first cost reporting period that begins on or after October 1, 1983."

***Explanation of Provision***

The provision clarifies the effective date of the judicial review provisions.

***Effective Date***

Applies to court actions brought on and after the enactment of Public Law 98-21.



**42. Access to Home Health Services (sec. 949 of the bill)**

(Contained in S. 2062 as originally reported)

***(a) Present Law***

Current law requires a physician to certify to a patient's health needs and establish a plan of care before the patient can qualify for home health benefits. The Secretary is directed, however, to prescribe regulations to disqualify a physician from carrying out these functions for patients of any agency in which the physician has a significant ownership interest or a significant financial or contractual relationship.

***Explanation of Provision***

The provision permits a physician who has a financial interest in an agency which is a sole community provider to carry out the certification and plan-of-care functions for patients who will receive services from the agency. Existing regulations, which were intended to prevent potential conflicts of interest, have created a serious problem for the relatively few patients whose physicians have an interest in the only agency in the area. These patients have been unable to qualify for home health benefits unless they switched physicians.

***Effective Date***

Enactment.

***(b) Present Law***

Current regulations specifying which physicians are disqualified from carrying out the certification and plan-of-care functions for the patients of a home health agency include physicians who are uncompensated officers or directors of agencies even though they have no financial interest in its operation.

***Explanation of Provision***

The provision deletes from the list of disqualified physicians uncompensated officers or directors of agencies. These physicians do not stand to gain or lose from referrals to the agency.

***Effective Date***

Enactment.

**43. Provider Representation In Peer Review Organizations (PROs) (sec. 950 of the bill)**

(Contained in S. 2062 as originally reported)

***Present Law***

Under current law, no health care facility such as a hospital may be a peer review organization although they may perform "delegated review" for a peer review organization. The law specifically pro-

hibits the Secretary of HHS from contracting with an entity which is, or is affiliated with (through management, ownership or common control), a health care facility. The Secretary, by regulation, has interpreted this to mean that a peer review organization (PRO) may not have a governing body which has as a member any individual who is a governing body member, officer, or managing employee of a health care facility.

It is common among professional standards review organizations (PSRO's), which are being phased out and replaced by PRO's, for one or two hospital administrators to sit on the PSRO board. The regulation could have the effect of prohibiting any physician or other person who is on the board of, or has certain administrative responsibilities in, a hospital from serving on the board of a PRO.

### *Explanation of Provision*

The provision provides for limited representation of provider related individuals on PRO's. In the case of a PRO with a governing body of 15 or fewer members, one such member may be a governing body member, officer, or managing employee of a health care facility; and in the case of a PRO with a governing body of more than 15 members, no more than two such members may be a governing body member, officer, or managing employee of a health care facility.

### *Effective Date*

Enactment.

## **44. Prospective Payment Assessment Commission (sec. 951 of the bill)**

### *Present Law*

The "Social Security Amendments of 1983" (P.L. 98-21) provided for the implementation of a prospective payment system for hospitals under the Medicare program. The legislation established an independent, legislative-branch commission to assist the Department of Health and Human Services (HHS) and the Congress in dealing with the issues that will arise with respect to the new payment method. This Prospective Payment Assessment Commission is required to make recommendations concerning the annual percentage increase factor for diagnosis related group (DRG) payment rates. The Commission is also required to make recommendations with respect to changes in the DRGs based on its evaluation of scientific evidence.

### *Explanation of Provision*

The provision would make several clarifying changes. It would clarify that the Commission is an independent authority and responsible for requesting appropriations. The Commission would be exempt from competitive public bidding (considered to be too cumbersome for an organization of the Commission's size) and from open-meeting requirements. Further, HHS would be directed to provide the Commission with basic support services and be reim-

bursed out of funds of the Commission. The provision would also authorize HHS to finance clinical trials under certain conditions. Provision would also be made for the appointment of an executive director. Physicians serving as personnel of the Commission may be provided a physician comparability allowance by the Commission similar to those provided to physicians employed in the Executive Branch.

### *Effective Date*

Enactment.

#### **45. Medicaid Clinic Administration (sec. 952 of the bill)**

(Contained in S. 2062 as originally reported)

### *Present Law*

By law, States may cover clinic services under their Medicaid programs. To assure that the clinic services are provided on a safe and appropriate basis, regulations issued by the Department of Health and Human Services limit coverage to situations where services are furnished under the direction of a physician. In certain cases, the physician direction rule has been interpreted as requiring that clinic administrators be physicians.

### *Explanation of Provision*

The provision would direct the Department of Health and Human Services to modify the physician-direction requirement to clarify that the administrator of a clinic need not be a physician.

### *Effective Date*

Enactment.

#### **46. Enrollment and Premium Penalty With Respect to Working Aged Provision (sec. 953 of the bill)**

(Contained in S. 2062 as originally reported)

### *Present Law*

The "Tax Equity and Fiscal Responsibility Act" (TEFRA) required employers to offer their employees aged 65 to 69 the same health benefits plan as offered to their younger workers. At the employee's option, Medicare payments may be secondary with respect to himself and to a spouse if age 65-69. Aged employees and spouses who elect enrollment in such employer offered health benefit plans may wish to delay enrollment in Part B because Part B coverage may be duplicative. However, these persons are currently subject to a late enrollment penalty. By law, the monthly Part B premium is increased by 10 percent for each full 12 months that individuals delays enrollment in the program beyond their initial enrollment period.



### *Explanation of Provision*

The provision would waive the Part B delayed enrollment penalty for workers and their spouses aged 65 to 70 who elect private coverage under the provisions of TEFRA and would establish special enrollment periods for such workers. The waiver would apply for the period during which an individual continued to be covered under an employer's group health benefits plan.

### *Effective Date*

Enactment.

#### **47. Emergency Room Services (sec. 954 of the bill)**

(Contained in S. 2062 as originally reported)

### *Present Law*

The "Omnibus Budget Reconciliation Act of 1981" (P.L. 97-35) included a provision requiring the Secretary of HHS to place reasonable limits on hospital costs and physician charges for outpatient services. The limits were to be reasonably related to the charges for similar services in physician's offices in the area. The statute specifically exempted from the outpatient limits "bona fide emergency services provided in an emergency room."

The Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248) included a provision to eliminate duplicate overhead payments for outpatient services. The provision added authority for the Secretary to reduce the payment to a physician providing services in an outpatient department by a factor representing the overhead costs already being paid by Medicare through the payment to the hospital.

The Secretary of HHS issued implementing regulations for these provisions on October 1, 1982. The definition of "bona fide emergency services" was limited to services necessary to prevent death or serious impairment. After receiving public comment, the Department of HHS reconsidered the definition. Although the regulations have not yet been reissued, it appears that the Department is prepared to broaden the definition.

### *Explanation of Provision*

The provision would provide for the following statutory definition of "bona fide emergency services":

Services provided in a hospital emergency room after the sudden onset of a medical condition manifesting itself by symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in (a) placing the patient's health in serious jeopardy; (b) serious impairment to bodily functions; or (c) serious dysfunction of any bodily organ or part.

The Committee believes that a statutory definition of "bona fide emergency services" is necessary to express clearly the intent of Congress in this regard.

### *Effective Date*

Services furnished on or after enactment.

#### **48. Nurse Anesthetists (sec. 955 of the bill)**

(Contained in S. 2062 as originally reported)

### *Present Law*

Under the new prospective payment system enacted as a part of the Social Security Amendments of 1983 (P.L. 98-21), Medicare's payments to hospitals under Part A will be based on the diagnosis of the patient. Each diagnosis-related group (DRG) payment is intended to cover all the services that hospitals customarily furnish in caring for patients with a specified diagnosis.

Certified registered nurse anesthetists (CRNAs) have a variety of employment arrangements. Nearly 40 percent of all anesthesia services are provided by CRNAs employed by, or under contract with, hospitals. Certified registered nurse anesthetists who are paid by the hospital often assist at operations by anesthetizing the patient. A part of each hospital's DRG payment is intended to cover these costs. On the other hand, a physician might provide the anesthetic, and in these cases the physician can bill Medicare separately. Physicians may also employ nurse anesthetists and bill for their services through part B. Since a hospital will be paid the same amount regardless of whether it pays a CRNA to perform the procedure, or a physician or a CRNA whom he employs, gives the anesthetic at no cost to the hospital, there is a clear financial incentive for hospitals to have physicians replace CRNAs employed by the hospital.

### *Explanation of Provision*

The provision provides that the costs a hospital actually incurs in employing CRNAs are to be reimbursed on a reasonable cost basis. Thus, the hospital will have neither a financial incentive or disincentive to employ CRNAs. The costs may not be based on a greater number of CRNAs than were employed by a hospital in 1982, unless the Secretary determines that patient volume, patient mix, or a loss of physicians' services requires otherwise.

The provision further requires the Secretary to conduct a study and report to Congress on an alternative method for reimbursing for these services. Such alternative method should not discourage the use of CRNAs.

### *Effective Date*

Hospital reporting periods beginning on and after October 1, 1984.



#### 49. Prospective Payment Wage Index (sec. 956 of the bill)

(Contained in S. 2062 as originally reported)

##### *Present Law*

The "Social Security Amendments of 1983" (P.L. 98-21) provided for the implementation of a prospective payment system for hospitals under the Medicare program. Under the system, payments made to hospitals are adjusted to reflect differences in hospital area wage levels. The wage index is calculated based on wage and employment data maintained by the Bureau of Labor Statistics (BLS) of the Department of Labor. This data is currently the most reliable national data available. However, it is an inadequate measure of wage differences because it fails to accurately reflect the relative use of part time and full time employees in calculating the index.

##### *Explanation of Provision*

The provision would direct the Secretary of Health and Human Services to consult with the Secretary of Labor to develop methods of refining and improving the adequacy and equity of the hospital wage index, taking into account wage differences of part time and full time workers. The Secretary of HHS would be required to report to the Congress by May 1, 1984.

The provision would further require the Secretary to adjust, if found appropriate, a hospital's payment to reflect changes made in the index. Such adjustments would be made for reporting periods beginning on or after October 1, 1983. In making any necessary adjustment for the first reporting period beginning on or after October 1, 1984, any overpayment or underpayment that may have occurred in the previous cost reporting period would be taken into account.

##### *Effective Date*

Enactment

#### 50. Hospice Contracting for Core Services (sec. 957 of the bill)

(Contained in S. 2062 as originally reported)

##### *Present Law*

Public Law 98-248, the "Tax Equity and Fiscal Responsibility Act of 1982", authorized for the period November 1, 1983 to October 1, 1986 Medicare Part A coverage for hospice services provided to terminally ill Medicare beneficiaries with a life expectancy of six months or less. The law specifies that a hospice must routinely provide directly, substantially all of the following "core services": nursing care, medical social services, physician's services, and counseling services. The remaining "non-core services" may be provided either directly by the hospice or under arrangements with others, in which case the hospice must maintain professional management responsibility for all such services furnished to an individ-

ual, regardless of the location or facility in which such services are furnished.

Under existing regulations, a hospice may use contracted staff to meet the "core service" needs of its patients but only when necessary to supplement hospice employees during periods of peak patient loads or under extraordinary circumstances.

### *Explanation of Provision*

The provision would permit the Secretary to waive the nursing care "core services" requirements for hospices that are located in rural areas, that were in operation on or before January 1, 1983, and that have demonstrated a good faith effort to hire their own nurses. A waiver request would be granted automatically unless expressly denied by the Secretary within 60 days. The granting of a waiver would not preclude the favorable consideration of a subsequent waiver request should such a request be made.

In providing for this waiver, the Committee emphasizes that it does not support or condone the establishment of hospices which serve only as brokers for services. Hospices which receive core-service waivers would be expected to exert professional management responsibility over the services and would be accountable for assuring that they are rendered consistent with the plan of care.

The provision would also require the Secretary to study the necessity and appropriateness of the core service requirement and report his findings to Congress within 18 months of enactment. The Committee wishes to express its interest in having the Secretary make recommendations for (1) legislative action to further protect hospice patients and the Medicare program from fraud and abuse and (2) standards of quality to be used in connection with hospice services.

### *Effective Date*

Enactment.

## **51. Exemption of Public Psychiatric Hospitals From Provision Limiting Reimbursement to SNF Rates (sec. 958 of the bill)**

(Contained in S. 2062 as originally reported)

### *Present Law*

Under the terms of a reimbursement experimentation contract with the State of New Jersey, Medicaid patients who need skilled nursing or intermediate care facility care, but who are waiting in a hospital for placement in a nursing home, are subject to different reimbursement rules than those who need acute inpatient hospital services. If the Secretary determines that the hospital has no excess beds, and if there are no excess hospital beds in the hospital's service area, the reimbursement for patients awaiting nursing home placement is set at the hospital's acute care rate; otherwise, Medicaid reimbursement must reflect the level of care actually received by the patient. (A similar Medicare statutory provision which would make this policy applicable nationwide has not yet been implemented.)

The application of this policy to public psychiatric hospitals in New Jersey has created a problem for the State and some of its localities. After July 1, 1984, reimbursement for Medicaid patients in these facilities awaiting nursing home placement will no longer be set at the acute care rate, but will be lowered to the skilled nursing facility rate. This will result in a sudden drop in the Medicaid reimbursement rate to the affected facilities by as much as 50 percent.

### *Explanation of Provision*

The provision delays until July 1, 1985, the application of any reimbursement reductions required to be made to public psychiatric hospitals due to the level of care received by Medicaid patients in such hospital. The provision further requires that one-third of the reductions take effect during the year ending June 30, 1986, and that the remaining two-thirds of the reductions take effect during the year ending June 30, 1987.

The Committee believes that a gradual phase-in of the policy under the New Jersey reimbursement experiment would be appropriate.

### *Estimated Cost*

Fiscal year:	Millions
1984 .....	\$5
1985 .....	10
1986 .....	6
1987 .....	3
4-year total .....	\$24

### *Effective Date*

Enactment.

## **52. Certification of Psychiatric Hospitals (sec. 959 of the bill)**

(Contained in S. 2062 as originally reported)

### *Present Law*

Under present law, psychiatric hospitals must be accredited by the Joint Commission on the Accreditation of Hospitals (JCAH) in order to participate in Medicare and Medicaid. Psychiatric units of general hospitals must also be accredited by the JCAH in order to receive Medicaid payments for the care of children.

### *Explanation of Provision*

The provision permits psychiatric hospitals and psychiatric units of general hospitals to participate in Medicare and Medicaid on the basis of a survey by the Secretary of Health and Human Services or, if found appropriate, accreditation by the American Osteopathic Association or the JCAH.

### *Effective Date*

Enactment.



### **53. Payments to Teaching Physicians (sec. 960 of the bill)**

(Contained in S. 2062 as originally reported)

#### ***Present Law***

Under a provision of current law, which has not yet been implemented, teaching physicians who practice primarily in teaching hospitals may be paid charges for their services to Medicare patients if charges for their services are also billed to other patients. The level of charges that is to be paid by Medicare under present law is to be based on the amounts charged and collected for non-Medicare patients.

Implementation of this policy could result in large payment reductions, and financial problems, for some teaching hospitals in States which have very low Medicaid payment rates. These rates sometimes represent as little as 25 percent of the area's prevailing charges. Their use in calculating Medicare payment levels would reduce Medicare reimbursement substantially.

#### ***Explanation of Provision***

The provision provides that the Medicare reasonable charge for a physician's service furnished in a teaching hospital may not be less than 75 percent of the prevailing charge for that service in the locality.

#### ***Effective Date***

Enactment.

### **54. Pacemaker Reimbursement Review and Reform (sec. 961 of the bill)**

#### ***Present Law***

Current law provides for the physician services associated with the implantation of cardiac pacemakers and post-implantation monitoring of these devices to be reimbursed under Part B. A number of criticisms have been raised concerning current Medicare policies and practices relating to cardiac pacemakers. The criticisms focus on the frequency of trans-telephonic monitoring of pacemakers and physician fees for the implantation of pacemakers.

#### ***S. 2062***

The bill would have required the Secretary of Health and Human Services to issue revisions by February 1, 1984 to the current coverage guidelines on the frequency of trans-telephonic monitoring procedures considered to be reasonable and necessary. The Secretary is now reviewing Medicare policies in this area. As a part of this review, the American College of Cardiology, the American Heart Association, the American Medical Association, and other organizations and individuals with expertise in this area will provide materials to the Department. It was anticipated that the February 1, 1984 date provided the Department the necessary time to complete its analysis and issue revised guidelines.

The provision would have required the Secretary to review and report to the Congress on the appropriateness of the current rate of physician reimbursement for services associated with implantation and replacement of pacemakers and pacemaker leads. In conducting this review, the Secretary was to take into account the amounts recognized as reasonable with respect to the procedures and the time and difficulty of the procedures compared to those charged when the rates were first established. The Committee thus intended that the Secretary take into consideration improvements in pacemaker implantation and reductions in the time required for such procedures that have occurred over the past decade.

The provision required the Secretary, through the Commissioner of the Food and Drug Administration (FDA), to provide for a manufacturer-based registry of all cardiac pacemaker devices and leads for which payments may be made under Medicare. The bill required manufacturers to maintain a registry on its devices and leads which includes: model identification, serial number, the name of the recipient, the date and geographic location of the implantation or removal, and the name of the physician, hospital or other provider. The registry would include any express or implied warranties associated with the device and any other information which the Secretary deemed appropriate. The registry would be readily accessible to duly authorized agents of the Food and Drug Administration.

The purpose of the registry was to assist the Secretary in determining when Medicare payments for a replacement pacemaker may properly be made, in determining when inspection by the FDA may be necessary for purposes of review and testing for malfunctions of pacemakers, in tracing the performance of cardiac pacemaker devices and leads, and in carrying out such other studies as the Secretary determined appropriate. The Secretary was specifically prohibited from identifying any recipient of a pacemaker by name.

The Secretary was authorized to require, by regulation, that all patients bearing a device or lead for which Medicare payment was made or requested, be registered with the manufacturer of the device or lead. The Secretary could, also, by regulation, require that any device or lead explanted from any such patient be returned to the manufacturer of same. Failure to return an explanted device or lead could be grounds for the intermediary to deny payment for the replacement of such device or lead.

The Secretary could require the manufacturers to maintain accurate records and report annually to the FDA on the results of all returned product analyses and on such other clinical experiences as are deemed appropriate. In the case of adverse performance, manufacturers would be required to provide prompt notification to the FDA.

The bill authorized the Secretary to require the manufacturer to test or analyze each returned cardiac pacemaker device or lead and provide the test results to the institution or party who returned it to the manufacturer together with information as to whether or not such unit qualifies for any warranty or other credit. In any case where the Secretary has reason to believe that replacement of a pacemaker is related to its malfunction, the Secretary could re-



quire that FDA personnel have access to the manufacturers testing records or may verify such testing.

### *Modified Proposal*

This provision would modify the provision previously agreed to by the Committee as part of S. 2062, which directed the Secretary to study the impact technology should have on the costs of physician services, publish guidelines on the frequency and appropriate payment levels for trans-telephonic monitoring, and establish a manufacturer-administered pacemaker registry.

As a result of the modification (1) the Secretary would be required to publish the revisions of the current coverage guidelines by April 1, 1984, (2) the Secretary also would be required to study the reasonableness of Part A payments associated with pacemaker implants and (3) a pacemaker registry provided through the FDA, rather than manufacturer-based, would be required.

### *Effective Date*

Enactment.

## **55. Open Enrollment Period for Health Maintenance Organizations and Competitive Medical Plans (sec. 962 of the bill)**

(Contained in S. 2062 as originally reported)

### *Present Law*

Under current law, health maintenance organizations (HMOs) and competitive medical plans (CMPs) are required to have an open enrollment period of at least 30 days during which time they must accept Medicare beneficiaries up to the limits of their capacity.

### *Explanation of Provision*

The provision requires the Secretary to designate one 30-day period in which all of the CMPs and HMOs in an area participating in Medicare must conduct open enrollment. The CMP or HMO would be permitted, in addition, to provide for open enrollment at other times during the year or hold enrollment open throughout the year. The Secretary would be required to establish annual per capita rates in a manner that assures that the beneficiaries enrolling during the designated 30-day open enrollment period will not have their premiums increased or their benefits decreased for the 12-month enrollment period for which the beneficiary is enrolling.

The Secretary, in establishing the open enrollment period for a geographic area, would be directed to consult with the CMPs or HMOs in the area concerning the timing of the annual 30-day open enrollment period. It is the intent of the Committee that the majority of CMPs or HMOs annual enrollments occur during the coordinated open enrollment period.

The Committee understands that there may be some difficulty in administering this provision and has therefore allowed the Secretary a period of not more than three years to phase in this provi-

sion. The Committee intends that the Secretary make every effort to designate open enrollment periods for different areas as soon as possible and not wait until the second or third year of this period before designating open enrollment periods.

### *Effective Date*

Enactment.

## **56. Waivers for Social Health Maintenance Organizations (sec. 963 of the bill)**

### *Present Law*

Present law gives the Secretary general authority to conduct experiments and demonstrations. While the Department has provided start-up funding for four demonstration projects for social HMO's, operational funding has not been provided.

### *Explanation of Provision*

The amendment requires the Secretary to approve certain waivers for a project to demonstrate the concept of a social HMO at four sites within 30 days after submission of a waiver request or within 30 days of enactment, whichever date is earlier.

### *Effective Date*

Enactment.

## **57. Funding for PSRO Review (sec. 964 of the bill)**

### *Present Law*

Since 1982, the PSRO program has been hampered by inadequate and uncertain funding. In order to avoid these problems in the future, legislation was enacted earlier this year (P.L. 98-21) which provides that the soon-to-be-established PRO's to be automatically funded outside the appropriations process.

Under this 1983 legislation, the Secretary of Health and Human Services is directed to pay PRO's amounts determined to be reasonable, but not less than the 1982 funding levels (adjusted for inflation).

Because it was believed that the PRO program would replace PSRO's early in fiscal year 1984, this special authorization was not extended to the expiring PSRO's. However, delays in issuing regulations for the new PRO program have made it necessary to continue funding PSRO's well into fiscal year 1984.

It now appears likely that the PSRO appropriation will not be sufficient to cover the costs of their protracted 1984 operations.

### *Explanation of Provision*

The provision would permit funding of PSRO's out of the part A Trust Fund, making funding no longer subject to the appropriations process. In addition, two dates contained in the PRO legislation would be moved back three months to take into account the delay in implementation.

The date by which hospitals are required to have an agreement with a PRO would be changed from October 1, 1984, to January 1, 1985. The date on which Medicare claims processing organizations can first qualify as PRO's would be similarly changed.

### *Effective Date*

May 1, 1984.

### **58. Other Considerations**

Under a provision of the 1980 amendments, small rural hospitals are allowed to temporarily participate in Medicare under certain circumstances even though they are unable to meet the Medicare requirement that they provide 24-hour nursing. One of the conditions is that the hospital's lack of nursing must be due to a temporary nurse shortage and that the hospital is making a good faith effort to comply with the program's nursing standards.

The Committee believes that in assessing the hospital's effort to attract personnel, consideration should be given to the economic conditions in the area in which the hospital is located and the communities ability to attract and pay skilled hospital staff and provide employment for a spouse. Specifically, factors such as rate of unemployment, relative poverty and hardship resulting from natural disasters or economic dislocation should be identified and given weight.

In the case of a facility which functions as a sole community provider, or where a hospital is located in a geographically remote area, care shall be taken to ensure that hospital emergency services continue to be accessible to area residents.



## **B. Income Maintenance Provisions**

### ***Aid to Families With Dependent Children (AFDC) Provisions***

#### **1. Parents and Siblings of Dependent Child Included in AFDC Family (sec. 971 of the bill)**

(Contained in S. 2062 as originally reported)

##### ***Present Law***

There is no requirement in present law that parents and all siblings be included in the AFDC filing unit. Families applying for assistance may exclude from the filing unit certain family members who have income which might reduce the family benefit. For example, a family might choose to exclude a child who is receiving social security or child support payments, if the payments would reduce the family's benefits by an amount greater than the amount payable on behalf of the child. In addition, a mother who is a minor is excluded if she is supported by her parents. However, if she has no income of her own which may be attributed to her child, the child may qualify for assistance as a one-person unit, and receive proportionately more in assistance than it would receive as part of a two-person unit. The income of the parents of the minor parent is not considered in determining the eligibility of the child.

##### ***Explanation of Provision***

The provision approved by the Committee would require States to include in the filing unit the parents and all dependent minor siblings (except SSI recipients and any stepbrothers and stepsisters) living with a child who applies for or receives AFDC. In addition, if a minor who is living in the same home as his parents applies for aid as the parent of a needy child, the income of the minor's parents would be counted as available to the filing unit. The rules that would be used in determining the amount of available income would be the same as are currently used in counting the income of stepparents.

This change will end the present practice whereby families exclude members with income in order to maximize family benefits, and will ensure that the income of family members who live together and share expenses is recognized and counted as available to the family as a whole. A similar provision was approved by the Committee last year, but was dropped in conference with the House.

##### ***Effective Date***

April 1, 1984.

*Estimated Savings*

Fiscal year:	Millions
1984 .....	\$35
1985 .....	135
1986 .....	140
1987 .....	145
4-year total.....	\$455

**2. Households Headed by Minor Parents (sec. 972 of the bill)**

(Contained in S. 2062 as originally reported)

*Present Law*

A minor parent who has a child, and who leaves home, may establish her own household and claim AFDC as a separate family unit. The income of the parents of the minor parent is not automatically counted as available to the minor parent, because they are not sharing the household.

*Explanation of Provision*

In the case of a minor parent who is not and has never been married, AFDC may be provided only if the minor parent resides with her parent or legal guardian, unless the State agency determines that (1) the minor parent has no parent or legal guardian who is living and whose whereabouts are known, (2) the health and safety of the minor parent or the dependent child would be seriously jeopardized if she lived in the same residence with the parent or legal guardian, or (3) the minor parent has lived apart from the parent or legal guardian for a period of at least one year prior to the birth of the child, or before claiming aid, whichever is later. The State agency would be given authority to make payments to a protective payee with respect to a minor parent affected by the provision, until the individual is no longer considered a minor by the State.

The Committee approved a similar provision last year, but it was dropped in conference with the House.

*Effective Date*

April 1, 1984.

*Estimated Savings*

Fiscal year:	Millions
1984 .....	\$5
1985 .....	20
1986 .....	20
1987 .....	20
4-year total.....	\$65



### 3. Clarification of Earned Income Provisions (sec. 973 of the bill)

(Contained in S. 2062 as originally reported)

#### *Present Law*

The AFDC statute was amended in 1981 to change the way in which earned income is counted for purposes of determining eligibility and benefit amounts. As amended by Public Law 97-35, the law currently requires the States to disregard the following amounts of a family's earned income—

Eligibility Determination: (1) the first \$75 of monthly earnings for full time employment; and (2) the cost of care for a child or incapacitated adult, up to \$160 per child per month.

Benefit Calculation: (1) the first \$75 of monthly earnings for full time employment; (2) child care costs up to \$160 per child per month; and (3) \$30 plus one-third of earnings not previously disregarded.

The \$30 plus one-third disregard is allowed only during the first 4 consecutive months in which a recipient has earnings in excess of the standard work expense and child care disregards.

Courts in several States have been asked to interpret whether the term "earned income" refers to the gross amount earned by an individual before deductions are taken (for income taxes, insurance, FICA, support payments, or other items, regardless of whether the deduction is voluntary or involuntary), or whether the term refers to net income, after such deductions are taken. Regulations issued by the Department of Health and Human Services require that the term be interpreted as referring to gross income. However, courts in two States have ruled that the term must be interpreted as referring to net income.

#### *Explanation of Provision*

The statute would be amended to make clear that the term "earned income" means the gross amount of earnings, prior to the taking of payroll or other deductions. The provisions in the AFDC statute which require that specified amounts of earned income be disregarded in determining eligibility and benefits have historically been interpreted as requiring that such amounts be deducted from gross, rather than net, earnings.

The Committee agrees with the Department that there was no intention to change this interpretation when it approved the 1981 AFDC amendments. The Committee notes that when the Congressional Budget Office estimated the savings expected to be derived from the changes in 1981, it followed the interpretation shared by the Department and the Committee that the proposed disregards would apply to gross earnings.

#### *Effective Date*

Enactment.

*Estimated Savings*

Fiscal year:	Millions
1984 .....	\$8
1985 .....	24
1986 .....	24
1987 .....	24
4-year total.....	\$80

**4. CWEP Work for Federal Agencies Permitted (sec. 974 of the bill)**

(Contained in S. 2062 as originally reported)

*Present Law*

The Omnibus Budget Reconciliation Act of 1981 authorized States to conduct community work experience programs "which serve a useful purpose." Employable recipients may be required to participate in these programs as a condition of eligibility for AFDC.

*Explanation of Provision*

The statute would be amended to make clear that the participation in a CWEP program may include work performed for a Federal office or agency. Such work would not be considered to constitute Federal employment, and the State agency would be required to provide appropriate workers' compensation and tort claims protection to each participant.

*Effective Date*

Enactment.

*Estimated Savings*

No budget effect.

**5. Earned Income of Full-Time Students (sec. 975 of the bill)**

(Contained in S. 2062 as originally reported)

*Present Law*

The statute provides that eligibility for AFDC benefits is limited to families with gross incomes (income before application of any disregards) at or below 150 percent of the State's standard of need. A provision was included in Public Law 97-377, the Job Training Partnership Act, which amended the gross income limitation to allow States to disregard the income of an AFDC youth which is derived from a program carried out under that Act, in such amounts and for such period of time (not to exceed six months with respect to earned income) as the Secretary of Health and Human Services may provide in regulations.

*Explanation of Provision*

Under the Committee provision, for purposes of applying the gross income limitation, States would also be allowed to disregard

the income of an AFDC child who is a full-time student, under the same limitations with respect to amounts and periods of time as are applied in the case of youths who participate in a program under the Job Training Partnership Act.

***Effective Date***

Enactment.

***Estimated Costs***

Negligible.

***Supplemental Security Income (SSI) Provisions***

**1. Adjustments in SSI Benefits on Account of Retroactive Benefits Under Title II (sec. 976 of the bill)**

(Contained in S. 2062 as originally reported)

***Present Law***

Legislation was enacted in 1980 (P.L. 96-265) aimed at ensuring that an individual's entitlement under the Old-Age, Survivors, and Disability Insurance (OASDI) and Supplemental Security Income (SSI) programs would not result in windfall benefits. Under this legislation, OASDI benefits that are paid retroactively following the initial determination of eligibility, are reduced by the amount of any excess SSI benefits that are paid because the OASDI benefits have been received in a lump sum rather than in the months when regularly payable.

***Explanation of Provision***

The Committee provision would amend the present requirement to allow the adjustment of benefits in additional situations. First, in the case where retroactive OASDI benefits are paid before the SSI benefits, but for the same period, the retroactive SSI amount otherwise payable would be reduced by the amount that would not have been paid had OASDI been paid when regularly due. Second, the provision would allow for an adjustment of SSI and OASDI benefits which result from either an initial determination of eligibility or a resumption of payments following a period of suspension or termination of those benefits. In cases where retroactive OASDI benefits result from posteligibility events, such as earnings recomputations, the Secretary would be authorized to adjust those benefits when it is administratively feasible.

Finally, present law would be amended to coordinate the benefit adjustment provision with the SSI retrospective accounting system. Under present law, it is possible that the two-month lag in counting OASDI income for purposes of determining the SSI benefit amount can result in adjustment for less than the full retroactive period. The proposed change would make it possible to adjust benefits paid for the entire retroactive period.

*Effective Date*

Applicable to retroactive benefits (either OASDI or SSI) payable beginning 7 months after enactment.

*Estimated Savings*

Fiscal year:	Millions
1984 .....	0
1985 .....	\$12
1986 .....	17
1987 .....	18
4-year total.....	\$47

*Child Support Enforcement (CSE) Provisions***Regulatory Initiative on Medical Support (sec. 977 of the bill)**

(Contained in S. 2062 as originally reported)

*Present Law*

The Child Support Enforcement (CSE) program is a Federal-State partnership under which States are required to have a program which locates absent parents, establishes paternity and obtains and enforces support orders.

*Explanation of Provisions*

The provision would require the Secretary to issue regulations which would require State CSE agencies to petition the court to include medical support as part of the child support order whenever health care coverage is available to the absent parent at a reasonable cost. In addition, the regulation would provide for improved information exchange between the CSE and medicaid agencies on the availability of health insurance coverage.

*Effective Date*

Enactment.



## **C. Social Security Provisions**

- 1. Special Social Security Treatment for Church Employees (sec. 981 of the bill, secs. 1402, and 3121 of the Code, and secs. 210 and 211 of the Social Security Act)**

### ***Present Law***

#### ***FICA and self-employment taxes***

The Federal Insurance Contributions Act (FICA) imposes separate taxes on employers and employees equal to a percentage of wages paid as remuneration for employment, subject to certain exceptions. The 1984 FICA tax rates are 7 percent each for employers and employees (a combined 14 percent rate); a credit against the employee FICA tax of 0.3 percent of 1984 wages is allowed. These rates are scheduled to increase in stages until reaching a maximum of 7.65 percent each for employers and employees (a combined 15.3 percent) in 1990. A ceiling (\$37,800 in 1984), adjusted annually for increases in average wages, is imposed on the amount of wages subject to FICA taxes. Both the employee and employer taxes are paid to the Internal Revenue Service by the employer (in the case of employee taxes, after withholding these taxes from the employee's wages) and are deposited in the social security trust funds.

For self-employed individuals, a tax is imposed on self-employment income under the Self-Employment Contributions Act (SECA). This tax equals 14 percent of self-employment income in 1984 and is scheduled to increase to 15.3 percent by 1990, i.e., the rates are equal to the combined employer-employee FICA tax rates. However, for years through 1989, self-employed individuals are allowed a credit against the tax for a portion of self-employment income (2.7 percent in 1984). Thus, the net rate of SECA tax is somewhat lower than the combined FICA rate. Thereafter, self-employed individuals would be permitted special deductions designed to treat them in much the same manner as employees and employers are treated for social security and income tax purposes. The SECA tax does not apply to income which (together with wages) exceeds the FICA tax base; additionally, the tax does not apply if self-employment income for the taxable year is less than \$400.

Present law treats certain classes of employees, including employees of foreign governments and international organizations, as self-employed for purposes of social security taxes.

#### ***Employees of religious organizations***

Prior to the Social Security Amendments of 1983 (P.L. 98-21), employees of nonprofit religious, charitable, educational or other tax-exempt organizations of the type described in section 501(c)(3) of the Code were covered by social security only if the organization



waived (or was deemed to have waived) its exemption from social security taxation. Organizations for whom coverage had been in effect for at least 8 years were entitled to terminate coverage upon 2 years' advance notice to the Treasury Department.

The Social Security Amendments of 1983 extend mandatory social security coverage to employees of nonprofit organizations (including religious organizations), effective January 1, 1984. This coverage applies to employees of organizations which previously terminated coverage as well as to employees of organizations which had never been covered by social security. As under prior law, wages of an employee of a tax-exempt organization are excluded from social security for tax and benefit purposes if less than \$100 is paid to the employee in a calendar year.

*Ministers and certain members of religious orders.*—Under present law, employees who are ministers of a church in the exercise of their ministry or members of religious orders (other than members subject to a vow of poverty) in the exercise of duties required by the order are treated as self-employed individuals for purposes of social security taxes. Such individuals who are conscientiously, or because of religious principles, opposed to participation in a public insurance system may elect to be exempt from self-employment taxes and credit under social security (on earnings for services as ministers or members of religious orders) by filing an irrevocable one-time application to that effect within two years of beginning their ministry. The treatment of ministers and members of religious orders not subject to a vow of poverty was not affected by the 1983 amendments.

### *Reasons for Change*

The Committee remains committed to the policy of the 1983 amendments in extending mandatory social security coverage to employees of nonprofit organizations. Such employees are thereby assured protection under the old-age, disability, and hospital insurance programs of social security. In addition, the problem of windfalls accruing to workers with short periods of covered employment will be reduced. The Committee is aware, however, of the special problems which arise when a Federal tax (i.e., the employer's share of FICA taxes) is imposed directly upon a religious organization. Mandatory taxation of a religious organization inevitably raises concerns regarding the separation of church and state. Additionally, the taxation of amounts contributed to a church may suggest the possibility of government interference in the relationship of a church to its members.

The Committee bill attempts to resolve these concerns while maintaining mandatory social security coverage for employees of religious organizations and while continuing to provide equity between employees of religious organizations and other nonprofit organizations. Thus, the bill allows churches and certain church-controlled organizations to make a one-time election to treat their employees similarly to self-employed individuals for purposes of social security taxes. The election is limited to churches and organizations which state that they are opposed for religious reasons to the payment of social security taxes. If a church elects such treatment,

its employees will pay tax at a rate equal to or approaching the combined employee-employer FICA rate (that is, at the SECA rate less the credit against SECA taxes), and will be entitled to credit for their earnings equivalent to that received by employees of other nonprofit organizations; however, no social security taxes will be imposed directly upon the church. The Committee believes that this solution will result in equitable treatment for employees of religious organizations without impinging upon the separation of church and state. To ensure compliance with the self-employment tax provisions, the bill provides that the election remains in effect only so long as the organization electing self-employment treatment for its employees provides information to the IRS regarding wages paid to employees.

In addition to church employees, the bill allows an election to treat employees of certain church-controlled tax-exempt organizations similarly to self-employed individuals. However, many church-controlled organizations (including church-controlled universities and religious hospitals) provide services to the general public which are similar in nature to those provided by other, secular institutions. Allowing an election in these cases would result in differing treatment for employees of religious and secular organizations performing essentially similar functions (e.g. nurses in religious hospitals as opposed to nurses in secular facilities). Further, where an organization provides paid services to the general public, concerns regarding the separation of church and state become less pressing.

To meet the concerns above, the Committee bill therefore does not allow an election to church-controlled organizations which offer goods, services or facilities for sale to the general public (other than those offered on an incidental basis or for a nominal charge) and which normally receive more than 25 percent of their support from governmental sources and/or from sales receipts. (Because an election is not allowed with respect to services performed in an unrelated trade or business, these trades or businesses are excluded from the computation.) The Committee believes that these rules provide a fair, objective test for determining those organizations entitled to make an election without questioning the religious connection of any particular organization. However, for purposes of this provision, church-supported elementary and secondary schools are allowed to make an election regardless of the objective tests above.

### *Explanation of Provision*

#### *General rule*

The bill allows a church or qualified church-controlled organization to make a one-time election to exclude from the definition of employment, for purposes of FICA taxes, services performed in the employ of the church or organization. This exclusion does not apply to services performed in an unrelated trade or business of the church or organization. This election may be made only if (1) the electing organization states that it is opposed for religious reasons to the payment of social security taxes, and (2) the organization did



not have a waiver of exemption from social security coverage in effect on December 31, 1980.

Where an election is made to exclude services for FICA purposes, the employee will be treated similarly to the self-employed with respect to those services. Thus, the employee will be liable for SECA taxes on remuneration for such services. This tax will be imposed at the usual self-employment tax rate under section 1402 of the Code (e.g., 14 percent in 1984), and subject to the general self-employment tax credits for 1984 through 1989 and special deduction provisions thereafter. (The net rate of tax in 1984 is 11.3 percent.)

The bill does not affect the employment tax status of ministers of a church or members of a religious order.

### *Procedure for making election*

An election by existing or newly created organizations to exclude services for FICA purposes must be made prior to the first date, more than 90 days after enactment of the provision, on which a quarterly employment tax return would otherwise be due from the electing organization. The election will apply to all current and future employees of the electing organization for services performed on or after January 1, 1984. The election is to be made in accordance with such procedures as the Treasury Department determines to be appropriate. Once made, an election may not be revoked by the electing organization.

### *Eligibility to make election*

An election may be made by churches or qualified church-controlled organizations. For purposes of this provision, churches include conventions or associations of churches and elementary or secondary schools which are controlled, operated, or principally supported by a church or by a convention or association of churches.

Qualified church-controlled organizations include any church-controlled tax-exempt organization described in section 501(c)(3) of the Code, other than an organization which (1) offers goods, services, or facilities for sale, other than on an incidental basis, to the general public (e.g., to individuals who are not members of the church), other than goods, services, or facilities which are sold at a nominal charge which is substantially less than the cost of providing such goods, services, or facilities, and which (2) normally receives more than 25 percent of its support from either (a) governmental sources or (b) receipts from admissions, sales of merchandise, or furnishing of facilities in activities which are not unrelated trades or businesses, or (a) and (b) combined.

In order to be excluded from the definition of qualified church-controlled organizations, an organization must satisfy both of the tests above. Thus, a seminary, religious retreat center, or burial society would generally qualify to make an election, regardless of its funding sources, because it did not offer goods, services, or facilities for sale to the general public. Conversely, a church-run orphanage or old-age home would qualify, even if it is open to the general public, if not more than 25 percent of its support was derived from the receipts of admissions, sales of merchandise, or furnishing of facilities in other than unrelated trades or businesses from govern-

mental sources. However, where an organization satisfies both tests, the organization would not be eligible to make an election. The Committee specifically intends that church-run universities (other than religious seminaries) and hospitals which satisfy both tests will not be eligible to make an election. Auxiliary organizations of a church (including youth groups, women's auxiliaries, etc.) will generally satisfy neither of the Committee's tests and will thus be eligible to make an election. Similarly, church pension boards or fund-raising organizations generally would qualify to make an election.

### ***Information reporting requirement***

An organization electing to exclude services for FICA purposes nonetheless continues to be required to furnish relevant information required of employers subject to income tax withholding (sec. 6051). This includes information with respect to the identity of employees and the amount of wages paid to each employee. The election will be permanently revoked by the Treasury if the organization fails to provide such information for a period of two years or more and, upon request by the Treasury Department, fails to furnish previously unfurnished information for the period covered by the election. The revocation will apply back to the first year of the two year period for which there was a failure to furnish such information.

### ***Amount of remuneration subject to SECA taxes***

The remuneration on which the employee of an electing institution is to be liable for SECA tax generally is to be the same as the amount which would have been subject to FICA tax if that individual had continued to be treated as an employee. Thus, business expenses are not to be subtracted in computing self-employment income (reimbursed business expenses are not to be included in self-employment income, however), the \$400 threshold on self-employment-income does not apply, and a \$100 threshold is to apply in determining whether this remuneration is subject to SECA tax. However, after 1989 these individuals will be eligible for a deduction, in computing SECA taxes, for the product of net earnings from self-employment and one-half of the SECA rate.

### ***Refunds of taxes previously paid***

Where a church or church-controlled organization makes an election with respect to FICA taxes, and the electing organization has paid FICA taxes for services performed after December 31, 1983, which are covered by the election, the Treasury is required to refund such taxes (without interest) to the electing organization. Such refund is to be conditioned upon the electing organization agreeing to pay to each present or former employee that portion of the refund which is attributable to the employee portion of FICA taxes collected by the organization from such employee. The employee will then not be entitled to any other refund for such taxes.

### ***Estimated taxes***

Employees of electing institutions generally will be required to make estimated tax payments with respect to their SECA liability.

However, the Committee intends that employees who become liable for SECA taxes for 1984 because of an election by their employer made before the first date, more than 90 days after the date of enactment on which a quarterly employment tax return is generally due, are to be relieved of estimated tax penalties with respect to quarters of 1984 prior to the date by which the election is required to be made.

### *Effective Date*

This provision is effective for services performed after December 31, 1983.

### *Revenue Effect*

This provision will reduce fiscal year receipts by \$50 million in 1984, \$12 million in 1985, \$9 million in 1986, \$5 million in 1987, \$7 million in 1988, and \$3 million in 1989.

## **2. Social Security Coverage for Legislative Branch Employees Not Covered by the Civil Service Retirement System (sec. 982 of the bill)**

### *Present Law*

The Social Security Amendments of 1983 (P.L. 98-21) extend social security coverage to newly hired legislative branch employees and to those legislative branch employees not already covered by the Civil Service Retirement System (CSRS) as of December 31, 1983. Current legislative branch employees who are exempt from social security coverage maintain that exemption even with a break in Federal service, provided the break is less than 365 days.

Due to a drafting oversight, legislative branch employees who, by participating in CSRS, established an exemption from social security on December 31, 1983, can subsequently elect out of CSRS and be covered by neither retirement system.

### *Explanation of Provision*

The Committee provision would require legislative branch employees to be continuously covered by CSRS in order to retain the exemption from social security. Individuals electing to take a refund of CSRS contributions would thus become subject to social security on a mandatory basis since receipt of the refund necessitates a break in service and the termination (at least temporarily) of participation under CSRS. Individuals who leave employment in the legislative branch for any period less than 365 days would be covered by social security upon return to Federal employment only if they elected to receive a refund of CSRS contributions.

### *Effective Date*

On enactment. Legislative branch employees exempt from social security but not still covered by CSRS on the date of enactment of this amendment would be permitted 30 days after the date of enactment in which to reenroll in CSRS.



*Revenue Effect*

This provision will have a negligible revenue effect.

**3. Employees of Nonprofit Organizations Who Are Required to Participate in the Civil Service Retirement System (sec. 983 of the bill)**

*Present Law*

The Social Security Amendments of 1983 (Public Law 98-21) extend social security coverage to employees of nonprofit organizations. Due to an oversight, employees in certain nonprofit organizations (Legal Service Corporations, for example) who are covered on a mandatory basis by the Civil Service Retirement System will thus be covered on a mandatory basis by social security as well. Because such employees are not actually Federal employees, they are not provided relief from double-taxation under Title II of the Federal Physicians Comparability Allowance Amendments of 1983 (Public Law 98-168), known as the Federal Employees' Retirement Contribution Temporary Adjustment Act.

*Explanation of Provision*

Under the Committee provision, employees of nonprofit organizations who are covered on a mandatory basis by CSRS would be treated like Federal employees for purposes of social security. They would therefore be covered by social security if newly hired after January 1, 1984, or if they had a break in Federal service lasting more than 365 days.

*Effective Date*

Effective with respect to service performed on or after January 1, 1984.

*Revenue Effect*

This provision will have a negligible revenue effect.

## **D. Grace Commission Provisions**

### **1. Income and Eligibility Verification Procedures (sec. 991 of the bill)**

#### ***Present Law***

Wage data is used by the Social Security Administration and the Department of Agriculture for use in verifying eligibility for the AFDC, SSI and food stamp programs. The SSI program annually crosschecks data supplied by beneficiaries with the IRS/SSA data. State and local welfare agencies must request this data for use in verifying AFDC eligibility, unless quarterly wage data are available from their State unemployment compensation agencies; 42 jurisdictions collect wage data on a quarterly basis through their unemployment insurance (UI) programs, and three other States obtain this data through means other than the UI system.

#### ***Explanation of Provision***

The provision would authorize and require the Internal Revenue Service and SSA to make available to Federal and State agencies data on earned and unearned income for use in administering means-tested Federal benefit programs. This data may be used only for the purpose of verifying eligibility for the programs. Agencies receiving data would be subject to the restrictions on unauthorized disclosure of confidential information that are currently applicable. The Committee anticipates that data would be provided to agencies by means of low-cost computer exchange of information.

The provision prescribes a new income verification system under title XI of the Social Security Act. Under this system: (1) all beneficiaries must provide social security numbers; (2) programs must obtain and utilize for verification purposes, earned and unearned income data provided to the Secretary of HHS by the IRS and SSA; (3) each State must maintain a system under which employers make quarterly wage reports to a State agency (the quarterly wage system may, but need not be, a part of the State's unemployment insurance system); (4) the State must use wage report information for purposes of verifying its eligibility requirements for any program.

The quarterly wage reporting requirement does not mandate a State to collect data through its unemployment insurance program, nor would any State be required to change its UI system to comply with the amendment. Further, no State now collecting quarterly wage information through the UI system, or by any other means, would be required to alter its existing wage reporting format or the extent of its coverage so long as an existing system is reasonably comprehensive.

States which do not have quarterly wage reporting systems would have the option of developing such systems either within their unemployment compensation programs or elsewhere in State government. If States use the unemployment program to operate the wage reporting system, its costs would be reimbursable as an unemployment administrative expense on the same basis and under the same conditions as now apply to those 40 States which currently use wage reporting for the unemployment program. (However, the amendment requires that other programs utilizing the data make appropriate payments for the costs involved in providing information. If a State elects to establish a wage reporting system in a manner which would not, under existing rules, qualify for reimbursement as an unemployment insurance program cost, the costs of the wage reporting system would be appropriately shared among all those programs required by the amendment to use the information it provides and among any other programs for which the State uses the system.

The provision also requires State agencies to adopt, to the extent possible, a standardized format and procedures for administering benefit programs to allow exchange of information between agencies authorized to receive this data for purposes of verifying eligibility. Procedures must be implemented to target the use of this information in those ways which are most likely to be productive in identifying and preventing ineligibility.

### *Effective Date*

IRS is authorized to disclose unearned income data on the date of enactment, and is required to disclose such data as soon as is practicable to implement disclosure agreements including required safeguard reviews. The requirement to implement an income verification system under Title XI will be effective on April 1, 1985. However, the Secretary of HHS (Secretary of Labor, in the case of quarterly wage reporting) is authorized to grant a reasonable extension of time (in no event beyond October 1, 1986). Such extensions may be granted only when States adopt a good faith plan to achieve full implementation of the requirements no later than October 1, 1986.

### *Estimated Savings*

Fiscal year:	Millions
1984 .....	0
1985 .....	—\$31
1986 .....	300
1987 .....	391
4-year total.....	\$660

## **2. Collection and Deposit of Payments to Executive Agencies (sec. 992 of the bill)**

### *Present Law*

The Department of Treasury has introduced the Treasury Federal Communications System (TFCS) and lockbox systems to provide for accelerated deposit of Federal receipts. (TFCS enables the Federal Government to effect immediate fund withdrawals by electron-



ic transfer, while lockboxes permit faster bank deposit of Federal payments.) In fiscal year 1983, \$94 billion in Federal receipts (both tax and nontax) were collected by TFCS, and another \$1 billion through lockboxes. There remains, however, approximately \$55 billion in annual nontax receipts that are collected by means other than accelerated deposit.

### *Explanation of Provision*

Under this provision, the Secretary of the Treasury is authorized to prescribe the mechanisms that Federal agencies are to employ to collect revenues due the Government. Under the legislation, the Secretary is also authorized to prescribe the time frames within which funds collected by or for Federal agencies must be deposited for credit in the Treasury's account. In addition, the legislation generally reduces from 30 days to three days the statutory period for timely deposit of funds by custodians. Finally, the legislation confers the necessary enforcement authority. It is anticipated that the Bureau of Government Financial Operations will exercise the authority in this legislation as the Secretary's delegee.

It is expected that the Treasury will select from among six major collection mechanisms now available to it. These are automated paper processing techniques, electronic funds transfer under TFCS, preauthorized automatic withdrawals for recurring payments, corporate-to-corporate Automated Clearing House, Point-of-Sale, and home banking. However, as more efficient or effective mechanisms become available, the Treasury is authorized to require their use by agencies.

The regulations will require that agencies adopt collection and deposit methods prescribed by the Secretary. Agencies not complying with the regulations will be assessed a charge equal to the cost to the general fund of noncompliance, as determined by the Secretary. Any such charges will be deposited into a Treasury Cash Management Improvements Fund to be used for developing and implementing cash management initiatives.

### *Effective Date*

The Secretary is required to issue regulations as soon as practicable, designed to achieve by October 1, 1986, full implementation of the accelerated deposit systems.

### *Estimated Savings*

Fiscal year:	Millions
1984 .....	0
1985 .....	0
1986 .....	\$800
1987 .....	800
4-year total.....	\$1,600

### 3. Collection of Nontax Debts Owed to Federal Agencies (sec. 993 of the bill)

#### *Present Law*

Under section 6402, the Secretary may credit the amount of any overpayment of tax in one year (including any interest thereon) against any liability in respect of an internal revenue tax for the same taxpayer for another year. Overpayment of income taxes can be credited against any taxes due from the taxpayer, including stamp, excise or employment tax, and any interest, additional amount, addition to the tax or assessable penalty. When a debt to the United States has been reduced to judgment, or when a taxpayer is in bankruptcy, the IRS may offset the taxpayer's refund by the amount of the debt. There is, however, no clear authority to offset administratively refunds prior to when the taxpayer's obligation has not been adjudicated.

Beginning with tax returns filed in 1982, tax refunds due taxpayers who are delinquent in making child and spousal support payments must be applied against past-due support obligations if (1) the person designated to receive the support is receiving Aid to Families with Dependent Children from a State welfare agency and the State has received that person's assignment of the support obligation; (2) the State has made a reasonable effort to collect the support; (3) the amount of past-due support is at least \$150; (4) the support has been delinquent for at least 3 months; and (5) none of the past-due support has been received by the IRS through the State agency's notification to the Department of Health and Human Services.

#### *Explanation of Provision*

The provision amends section 6402 to provide that the amount of any refund of internal revenue taxes would be reduced by the amount of any certified debt owed to the Federal government. The agency responsible for collecting the debt must certify to the Treasury that specific attempts to notify debtors have been made, as required in regulations to be issued by the Secretary, and that the debtor has not disputed the nature or the amount of the debt (or any dispute has been resolved by agreement between both the debtor and the agency), has not begun to repay the debt, and exhibits no reasonable intention to repay the debt. The agency must have entered into an agreement with the Secretary providing for the transmission of certified debt information to the Secretary before transmission occurs.

The Secretary is given the authority to prescribe the terms of agreements with other agencies. The Secretary will prescribe the format in which the information must be transmitted. In addition, the Secretary is authorized to test the offset procedures with selected programs at first, before fully implementing the program. The Secretary is authorized to disclose the amount of the refund being offset against the debt to the Federal agency for the purpose of, and only to the extent necessary in, administering this offset procedure. Disclosure would be required to be in the same manner and with the same safeguards as when disclosure is made to a State.



The Committee intends that AFDC child support obligations will be subject to offset before other Federal debts. The offset could not, however, be applied to beneficiary debts under the OASDI programs.

### *Effective Date*

This provision would be effective for refunds to be paid after December 31, 1985 and before January 1, 1988. This is intended to provide an opportunity for the Congress to evaluate the program.

### *Estimated Savings*

Fiscal year:	Millions
1984 .....	0
1985 .....	0
1986 .....	\$300
1987 .....	500
4-year total .....	\$800



# DEFICIT REDUCTION ACT OF 1984

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STATUTORY LANGUAGE OF PROVISIONS  
APPROVED BY THE  
COMMITTEE ON MARCH 21, 1984

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COMMITTEE ON FINANCE  
UNITED STATES SENATE

Volume II



APRIL 2, 1984

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U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1984

1 **VIII. STATUTORY LANGUAGE OF FINANCE**  
2 **COMMITTEE BUDGET DEFICIT REDUC-**  
3 **TION PROVISIONS**

4 **TITLE I—TAX REFORMS GENERALLY**

5 **SECTION 1. SHORT TITLE; AMENDMENT OF 1954 CODE; TABLE**  
6 **OF CONTENTS.**

7 (a) **SHORT TITLE.**—This title and titles II, III, IV, V,  
8 VI, VII, and VIII may be cited as the “Deficit Reduction  
9 Tax Act of 1984”.

10 (b) **AMENDMENT OF 1954 CODE.**—Except as otherwise  
11 expressly provided, whenever in this title and titles II, III,  
12 IV, V, VI, VII, and VIII an amendment or repeal is ex-  
13 pressed in terms of an amendment to, or repeal of, a section  
14 or other provision, the reference shall be considered to be  
15 made to a section or other provision of the Internal Revenue  
16 Code of 1954.

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1 (e) **EFFECTIVE DATE.**—The amendments made by this  
 2 section shall apply to awards received after the date of enact-  
 3 ment of this Act.

4 **SEC. 829. MORATORIUM ON ISSUANCE OF FRINGE BENEFIT**  
 5 **REGULATIONS.**

6 (a) **IN GENERAL.**—Section 1 of the Act entitled “An  
 7 Act to prohibit the issuance of regulations on the taxation of  
 8 fringe benefits, and for other purposes”, approved October 7,  
 9 1978 (26 U.S.C. 61 note) (relating to fringe benefit regula-  
 10 tions), is amended by striking out “December 31, 1983” each  
 11 place it appears and inserting in lieu thereof “December 31,  
 12 1985”.

13 (b) **FACULTY HOUSING.**—

14 (1) **IN GENERAL.**—For purposes of section 1(a) of  
 15 such Act, any regulation providing for the inclusion in  
 16 gross income under section 61 of the Internal Revenue  
 17 Code of 1954 of the excess (if any) of the fair market  
 18 value of qualified campus lodging over the greater of—

19 (A) the operating costs paid or incurred in  
 20 furnishing such lodging, or

21 (B) the rent received for such lodging,  
 22 shall be considered to be a fringe benefit regulation.

23 (2) **QUALIFIED CAMPUS LODGING.**—For purposes  
 24 of this subsection, the term “qualified campus lodging”  
 25 means lodging which is—

1 (A) located on (or in close proximity to) a  
2 campus of an educational institution (described in  
3 section 170(b)(1)(A)(ii) of the Internal Revenue  
4 Code of 1954), and

5 (B) provided by such institution to an em-  
6 ployee of such institution, or to a spouse or de-  
7 pendent (within the meaning of section 152 of  
8 such Code) of such employee.

9 (3) SECTION NOT TO APPLY TO AMOUNTS  
10 TREATED AS WAGES (OR INCOME).—An amount—

11 (A) shall not be excluded from treatment as  
12 wages by reason of this subsection if the employer  
13 treated such amount as wages when paid, and

14 (B) shall not be excluded from gross income  
15 by reason of this subsection if such amount was  
16 included in gross income by the taxpayer for the  
17 taxable year during which such amount was re-  
18 ceived or accrued.

19 (c) EFFECTIVE DATE.—

20 (1) SUBSECTION (a).—The amendments made by  
21 subsection (a) of this section shall take effect on the  
22 date of the enactment of this Act.

23 (2) SUBSECTION (b).—Subsection (b) of this sec-  
24 tion shall apply to lodging furnished after December  
25 31, 1983, and before January 1, 1986.

1 **SEC. 830. PICKUPS UNDER SALARY REDUCTION ARRANGE-**  
2 **MENTS.**

3 (a) **SOCIAL SECURITY ACT.**—Section 209 of the Social  
4 Security Act is amended by striking out “section 414(h)(2) of  
5 such Code” in the matter added by section 324(c)(1) of the  
6 Social Security Amendments of 1983 and inserting in lieu  
7 thereof “section 414(h)(2) of such Code where the pickup re-  
8 ferred to in such section is pursuant to a salary reduction  
9 arrangement (whether evidenced by a written instrument or  
10 otherwise)”.

11 (b) **INTERNAL REVENUE CODE OF 1954.**—

12 (1) **FICA.**—Subparagraph (B) of section  
13 3121(v)(1) is amended to read as follows:

14 “(B) any amount treated as an employer  
15 contribution under section 414(h)(2) where the  
16 pickup referred to in such section is pursuant to a  
17 salary reduction arrangement (whether evidenced  
18 by a written instrument or otherwise).”.

19 (2) **FUTA.**—Subparagraph (B) of section  
20 3306(r)(1) is amended to read as follows:

21 “(B) any amount treated as an employer  
22 contribution under section 414(h)(2) where the  
23 pickup referred to in such section is pursuant to a  
24 salary reduction arrangement (whether evidenced  
25 by a written instrument or otherwise).”.

1 the effect of a stock bonus, pension, profit-sharing, or  
 2 annuity plan, or other plan deferring the receipt of  
 3 compensation (including a plan described in paragraph  
 4 (2)), subsection (a) shall apply as if there were such a  
 5 plan.

6 “(2) PLANS PROVIDING DEFERRED EDUCATIONAL  
 7 BENEFITS.—For purposes of this section, any plan  
 8 providing for deferred educational benefits for employ-  
 9 ees, their spouses, or their dependents shall be treated  
 10 as a plan deferring the receipt of compensation. In the  
 11 case of such a plan, for purposes of this section, the  
 12 determination of when an amount is includible in gross  
 13 income shall be made without regard to section 117 or  
 14 127.”.

15 (c) EFFECTIVE DATE.—The amendments made by this  
 16 section shall apply to taxable years beginning after December  
 17 31, 1983.

18 TITLE IX—SPENDING REDUCTION  
 19 PROVISIONS  
 20 TABLE OF CONTENTS

SUBTITLE A—MEDICARE, MEDICAID, AND OTHER HEALTH PROVISIONS

PART I—MEDICARE BUDGET PROVISIONS

Sec. 901. Part B premium.

Sec. 902. One-month delay in medicare entitlement.

Sec. 903. Modification of working aged provision.

Sec. 904. Limitation on physician fee prevailing and customary charge levels; participating physician incentives.

Sec. 905. Limitation on increase in hospital costs per case.

Sec. 906. Fee schedule for clinical laboratory services.

Sec. 907. Revaluation of assets acquired by hospitals.



- Sec. 908. Repeal of preadmission diagnostic testing provision.
- Sec. 909. Skilled nursing facility reimbursement.
- Sec. 910. Rounding of part B payments.
- Sec. 911. Agreements for medicare claims processing.
- Sec. 912. Lesser of cost or charges.
- Sec. 913. Hepatitis B vaccine.
- Sec. 914. Limitation on certain foot care services.
- Sec. 915. Coverage of hemophilia clotting factor.
- Sec. 916. Indexing of part B deductible.
- Sec. 917. Cost sharing for durable medical equipment furnished as a home health benefit.
- Sec. 918. Transfers to Federal Hospital Insurance Trust Fund.

#### PART II—MEDICAID AND MCH BUDGET PROVISIONS

- Sec. 921. Extension of medicaid payment reductions and offsets.
- Sec. 922. Mandatory assignment of rights of payment by medicaid recipients.
- Sec. 923. Increase in medicaid ceiling amount for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.
- Sec. 924. Increase in authorization for maternal and child health block grant.
- Sec. 925. Medicaid coverage for pregnant women.
- Sec. 926. Recertification of SNF and ICF patients.

#### PART III—OTHER MEDICARE AND MEDICAID PROVISIONS

- Sec. 931. Study of physician reimbursement for cognitive services.
- Sec. 932. Elimination of part B deductible for certain diagnostic laboratory tests.
- Sec. 933. Payment for services following termination of participation agreements with home health agencies.
- Sec. 934. Repeal of special tuberculosis treatment requirements under medicare and medicaid.
- Sec. 935. Medicare recovery against certain third parties.
- Sec. 936. Indirect payment of supplementary medical insurance benefits.
- Sec. 937. Elimination of Health Insurance Benefits Advisory Council.
- Sec. 938. Confidentiality of accreditation surveys.
- Sec. 939. Flexible sanctions for noncompliance with requirements for end stage renal disease facilities.
- Sec. 940. Use of additional accrediting organizations under medicare.
- Sec. 941. Repeal of exclusion of for-profit organizations from research and demonstration grants.
- Sec. 942. Requirements for medical review and independent professional review under medicaid.
- Sec. 943. Flexibility in setting payment rates for hospitals furnishing long-term care services under medicaid.
- Sec. 944. Authority of the Secretary to issue and enforce subpoenas under medicaid.
- Sec. 945. Repeal of authority for payments to promote closing and conversion of underutilized hospital facilities.
- Sec. 946. Presidential appointment of and pay level for the Administrator of the Health Care Financing Administration.
- Sec. 947. Exclusion of certain entities owned or controlled by individuals convicted of medicare- or medicaid-related crimes.
- Sec. 948. Judicial review of Provider Reimbursement Review Board decisions.
- Sec. 949. Access to home health services.
- Sec. 950. Provider representation in peer review organizations.
- Sec. 951. Prospective Payment Assessment Commission.
- Sec. 952. Medicaid clinic administration.

- Sec. 953. Enrollment and premium penalty with respect to working aged provision.
- Sec. 954. Emergency room services.
- Sec. 955. Payment for services of a nurse anesthetist.
- Sec. 956. Prospective payment wage index.
- Sec. 957. Hospice contracting for core services.
- Sec. 958. Exemption of public psychiatric hospitals from provision limiting reimbursement to SNF rates.
- Sec. 959. Certification of psychiatric hospitals.
- Sec. 960. Payments to teaching physicians.
- Sec. 961. Pacemaker reimbursement review and reform.
- Sec. 962. Open enrollment period for health maintenance organizations and competitive medical plans.
- Sec. 963. Waivers for social health maintenance organization.
- Sec. 964. Funding for PSRO review.
- Sec. 965. Medicare technical amendments relating to the Social Security Amendments of 1983.

#### SUBTITLE B—INCOME MAINTENANCE PROVISIONS

- Sec. 971. Parents and siblings of dependent child included in AFDC family.
- Sec. 972. Households headed by minor parents.
- Sec. 973. Clarification of earned income provision.
- Sec. 974. CWEP work for Federal agencies permitted.
- Sec. 975. Earned income of full-time students.
- Sec. 976. Adjustments in SSI benefits on account of retroactive benefits under title II.
- Sec. 977. Regulatory initiative on medical support.

#### SUBTITLE C—OASDI PROVISIONS

- Sec. 981. Special social security treatment for certain church employees.
- Sec. 982. Social security coverage for legislative branch employees not covered by the civil service retirement system.
- Sec. 983. Employees of nonprofit organizations who are required to participate in the civil service retirement system.
- Sec. 984. Other technical corrections to title II of the Social Security Act and the Internal Revenue Code necessitated by the Social Security Amendments of 1983.
- Sec. 985. Technical corrections to the Social Security Amendments of 1983.

#### SUBTITLE D—IMPLEMENTATION OF GRACE COMMISSION RECOMMENDATIONS

- Sec. 991. Income and eligibility verification procedures.
- Sec. 992. Collection and deposit of payments to executive agencies.
- Sec. 993. Collection of non-tax debts owed to Federal agencies.

#### SUBTITLE E—CERTAIN PROVISIONS RELATING TO PUERTO RICO AND THE VIRGIN ISLANDS

- Sec. 996. Clarification of definition of articles produced in Puerto Rico or the Virgin Islands.
- Sec. 997. Limitation on transfers of excise tax revenues to Puerto Rico and the Virgin Islands.

1       SUBTITLE A—MEDICARE, MEDICAID, AND OTHER  
2                               HEALTH PROVISIONS

3               PART I—MEDICARE BUDGET PROVISIONS

4                       PART B PREMIUM

5       SEC. 901. (a) Section 1839(a) of the Social Security Act  
6 is amended by striking out paragraphs (2) and (3) and insert-  
7 ing in lieu thereof the following:

8       “(2) The monthly premium for each individual enrolled  
9 under this part for each month after December 1984 shall,  
10 except as provided in subsections (b) and (e), be an amount  
11 equal to 50 percent of the monthly actuarial rate for enrollees  
12 age 65 and over, as determined under paragraph (1) and ap-  
13 plicable to such month.

14       “(3) The Secretary shall, during September of 1984 and  
15 of each year thereafter, determine and promulgate the  
16 monthly premium applicable for individuals enrolled under  
17 this part for the succeeding calendar year. Whenever the  
18 Secretary promulgates the dollar amount which shall be ap-  
19 plicable as the monthly premium for any period, he shall, at  
20 the time such promulgation is announced, issue a public  
21 statement setting forth the actuarial assumptions and bases  
22 employed by him in arriving at the amount of an adequate  
23 actuarial rate for enrollees age 65 and older as provided in  
24 paragraph (1) and the derivation of the dollar amounts speci-  
25 fied in this paragraph.”.

1           (b) Section 1839(e) of such Act is amended to read as  
2 follows:

3           “(e)(1) If no cost-of-living increase becomes effective  
4 under section 215(i) in December of any year, the monthly  
5 premium of each individual enrolled under this part for the  
6 succeeding year shall (except as otherwise provided in sub-  
7 section (b)) be the same as the monthly premium (disregard-  
8 ing subsection (b)) of the individual for such December.

9           “(2) If paragraph (1) does not apply to the monthly pre-  
10 miums for a year, if an individual is entitled to monthly bene-  
11 fits under section 202 or 223 for November and for Decem-  
12 ber in that preceding year, and if the monthly premium for  
13 that December and for the following January is deducted  
14 from those benefits under section 1840(a)(1), the monthly  
15 premium for that individual for that January and for each of  
16 the succeeding 11 months for which he is entitled to benefits  
17 under section 202 or 223 shall (except as otherwise provided  
18 in subsection (b)) be the greater of—

19           “(1) the monthly premium amount determined  
20 under subsection (a)(2) for that January reduced by the  
21 amount (if any) necessary to make the monthly benefits  
22 under section 202 or 223 for that January after the  
23 deduction of the monthly premium (disregarding sub-  
24 section (b)) for that January at least equal to the  
25 monthly benefits under section 202 or 223 for the pre-



ceding November after the deduction of the premium  
(disregarding subsection (b)) for that individual for that  
November, or

“(2) the monthly premium (disregarding subsection (b)) for that individual for that December.

For purposes of this subsection, retroactive adjustments or payments and deductions on account of work shall not be taken into account in determining the monthly benefits to which an individual is entitled under section 202 or 223.”.

(c)(1) Section 1839(b) of such Act is amended by striking out “or (e)”.

(2) Subparagraphs (A)(i) and (B)(i) of section 1844(a)(1) of such Act are each amended by striking out “1839(c)(3) or 1839(e), as the case may be” and inserting in lieu thereof in each instance “1839(c)(2)”.

(d) The amendments made by this section shall apply to premiums for months beginning with January 1985.

## ONE-MONTH DELAY IN MEDICARE

### ENTITLEMENT

SEC. 902. (a) Section 226 of the Social Security Act is amended by redesignating subsection (h) as subsection (i), and by inserting after subsection (g) the following:

“(h)(1) Except as provided in paragraph (2), for purposes of subsection (a)(1) and any other provision of this section, any provision of title XVIII of this Act, or any other

1 provision of law, which establishes entitlement to or eligibil-  
2 ity for benefits under such title XVIII or establishes any  
3 period of time in relation to such entitlement or eligibility, on  
4 the basis of the attainment of age 65, an individual shall be  
5 deemed to have attained age 65 on the first day of the month  
6 following the month in which he actually attains such age;  
7 except that, if such individual was entitled to hospital insur-  
8 ance benefits for the month preceding the month in which he  
9 actually attains age 65, he shall be deemed to have attained  
10 age 65 on the first day of the month in which he actually  
11 attains such age.

12       “(2) For purposes of subsection (b)(1), an individual  
13 shall be deemed to have attained age 65 on the first day of  
14 the month in which he actually attains such age.”.

15       (b) Section 1836 of such Act is amended—

16               (1) by inserting “(a)” after the section designation;  
17       and

18               (2) by adding at the end thereof the following new  
19       subsection:

20       “(b) For purposes of subsection (a)(2), an individual shall  
21 be deemed to have attained age 65 on the first day of the  
22 month following the month in which he actually attains such  
23 age.”.

24       (c) The amendments made by this section shall apply to  
25 individuals actually attaining age 65 after 1984.

1     **MODIFICATION OF WORKING AGED PROVISION**

2           SEC. 903. (a) Section 1862(b)(3)(A)(i) of the Social Se-  
3     curity Act is amended by striking out "is over 64 but" each  
4     place it appears.

5           (b) Section 4(g)(1) of the Age Discrimination in Employ-  
6     ment Act of 1967 is amended—

7           (1) by inserting " , and any employee's spouse  
8     aged 65 through 69," after "aged 65 through 69"; and

9           (2) by inserting " , and the spouse of such employ-  
10    ee," after "same conditions as any employee".

11          (c)(1) The amendment made by subsection (a) shall be  
12    effective with respect to items and services furnished on or  
13    after January 1, 1985.

14          (2) The amendment made by subsection (b) shall become  
15    effective on January 1, 1985.

16     **LIMITATION ON PHYSICIAN FEE PREVAILING**  
17     **AND CUSTOMARY CHARGE LEVELS; PAR-**  
18     **TICIPATING PHYSICIAN INCENTIVES**

19          SEC. 904. (a) Section 1842(b) of the Social Security Act  
20    is amended—

21          (1) by redesignating paragraphs (4) through (6) as  
22    paragraphs (5) through (7), respectively, and by insert-  
23    ing after paragraph (3) the following new paragraph:

24          "(4)(A)(i) In determining the prevailing charge levels  
25    under the third and fourth sentences of paragraph (3) for phy-

1   sicians' services for the 12-month period beginning July 1,  
2   1984, the Secretary shall not set any level higher than the  
3   same level as was set for the 12-month period beginning July  
4   1, 1983.

5       “(ii) In determining the prevailing charge levels under  
6   the third and fourth sentences of paragraph (3) for physicians’  
7   services performed by a physician who is not a participating  
8   physician (as defined in paragraph (12)) for the 12-month  
9   period beginning July 1, 1985, the Secretary shall not set  
10   any level for such period that is higher than the level set  
11   under clause (i).

12       “(B) In determining the reasonable charge under para-  
13   graph (3) for physicians’ services for the 12-month period  
14   beginning July 1, 1984, the customary charges shall be  
15   deemed to be the same customary charges as were recog-  
16   nized under this section for the 12-month period beginning  
17   July 1, 1983.

18       “(C) In determining the prevailing charge levels under  
19   the third and fourth sentences of paragraph (3) for physicians’  
20   services for periods beginning after June 30, 1985 (in the  
21   case of a physician to whom subparagraph (A)(ii) does not  
22   apply) and for periods beginning after June 30, 1986 (in the  
23   case of a physician to whom subparagraph (A)(ii) applies) the  
24   Secretary shall treat the level as set under clause (i) of sub-  
25   paragraph (A) as having fully provided for the economic



1 changes which would have been taken into account but for  
2 the limitations contained in subparagraph (A).”; and

3 (2) by adding at the end thereof the following new  
4 paragraphs:

5 “(8)(A) Each year, the Secretary shall prepare and  
6 cause to be published a list containing the name, address,  
7 specialty, volume of services, and percent of bills submitted  
8 with respect to each physician and supplier during the pre-  
9 ceding year that were paid on the basis of an assignment  
10 described in paragraph (3)(B)(ii). The Secretary may limit  
11 such list to those physicians and suppliers who accepted such  
12 an assignment in a certain percentage of such physician’s or  
13 supplier’s billings, as the Secretary may determine to be ap-  
14 propriate. Such list shall be organized by region or by such  
15 other geographical unit as the Secretary determines, after  
16 consultation with carriers with which there is an agreement  
17 under subsection (a), would facilitate the use of such list by  
18 individuals enrolled under this part.

19 “(B) Each year, the Secretary shall prepare a directory  
20 containing the name, address, and specialty of all participat-  
21 ing physicians and suppliers (as defined in paragraph (12)) for  
22 the most current fee screen year. The directory shall be orga-  
23 nized to make the most useful presentation of the information  
24 (as determined by the Secretary) for individuals enrolled  
25 under this part.

1       “(C) Each year, the Secretary shall promptly notify in-  
2       dividuals enrolled under this part of the publication of such  
3       directory and shall make such directory available in each dis-  
4       trict and branch office of the Social Security Administration,  
5       in the offices of carriers, and to senior citizen organizations.

6       “(D) The Secretary shall provide that the directory shall  
7       be available for purchase by the public.

8       “(9) Each carrier having an agreement with the Secre-  
9       tary under subsection (a) shall maintain a toll-free telephone  
10      number or numbers at which individuals enrolled under this  
11      part may obtain the names, addresses, specialty, and tele-  
12      phone numbers of participating physicians and suppliers.

13      “(10) In any case in which a carrier having an agree-  
14      ment with the Secretary under subsection (a) is able to devel-  
15      op a system for the electronic transmission to such carrier of  
16      bills for services, such carrier shall establish direct lines for  
17      the electronic receipt of claims from participating physicians  
18      and suppliers.

19      “(11)(A) Each carrier having an agreement with the  
20      Secretary under subsection (a) shall, to the extent possible,  
21      enter into an agreement with any entity offering a medicare  
22      supplemental policy to an individual enrolled under this part  
23      under which a participating physician or supplier who pro-  
24      vides physicians' services to an individual insured by such a  
25      policy may—

1           “(i) submit a bill for such services to the carrier,  
2       which will pay such participating physician or supplier  
3       the amount payable with respect to such services under  
4       this part and notify such entity of the amount so paid  
5       and the unpaid balance of such bill; or

6           “(ii) submit a bill for such services to such entity,  
7       which will pay such participating physician or supplier  
8       an amount equal to the amount payable under such  
9       policy and the amount payable under this part with re-  
10      spect to such services, and bill the carrier for the  
11      amount payable under this part with respect to such  
12      services.

13   The carrier shall limit the applicability of the agreement to  
14   only participating physicians and suppliers.

15           “(B) In the case of an individual who is insured under a  
16   medicare supplemental policy described in paragraph (6)(C)  
17   (relating to indirect payment of part B benefits), payment to a  
18   participating physician or supplier shall be made in accord-  
19   ance with the terms of that paragraph.

20           “(12) For purposes of this subsection—

21           “(A) the term ‘participating physician or supplier’  
22      means a physician or supplier who, on or before March  
23      31, 1985, and each year thereafter (or at such other  
24      time as the Secretary determines will give physicians  
25      and suppliers adequate time to sign a participation

1 agreement), enters into an agreement with the Secre-  
2 tary which provides that, for the 12-month period be-  
3 ginning July 1 of each year, such physician or supplier  
4 will accept payment under this part on the basis of an  
5 assignment described in paragraph (3)(B)(ii) or under  
6 the procedures described in section 1870(f)(1) for serv-  
7 ices furnished during such 12-month period to individ-  
8 uals enrolled under this part; and

9 “(B) the term ‘medicare supplemental policy’  
10 means a health insurance policy or other health benefit  
11 plan—

12 “(i) certified by a State or by the Secretary  
13 in accordance with section 1882; or

14 “(ii) which is provided by one or more em-  
15 ployers or labor organizations, or the trustees of a  
16 fund established by one or more employers or  
17 labor organizations (or combination thereof), for  
18 employees or former employees (or combination  
19 thereof) or for members or former members (or  
20 combination thereof) of the labor organizations,  
21 and which is offered to individuals who are enti-  
22 tled to have payment made under this title, which  
23 provides reimbursement for expenses incurred for  
24 services and items for which payment may be  
25 made under this title but which are not reimburs-



1           able by reason of the applicability of deductibles,  
2           coinsurance amounts, or other limitations imposed  
3           pursuant to this title.”.

4   LIMITATION ON INCREASE IN HOSPITAL COSTS  
5                                   PER CASE

6       SEC. 905. (a) Section 1886(b)(3)(B) of the Social Secu-  
7   rity Act is amended—

8           (1) by inserting “(i)” after “(B)”;

9           (2) by striking out “1 percentage point plus”, and  
10       by inserting before the period at the end thereof the  
11       following: “, increased or decreased in accordance with  
12       clause (ii) or (iii)”;

13           (3) by adding at the end thereof the following:

14       “(ii) In the case of a hospital which is not a subsection  
15   (d) hospital—

16           “(I) for any cost reporting period or fiscal year  
17       beginning on or after October 1, 1984, and before Oc-  
18       tober 1, 1985, the applicable percentage increase shall  
19       be the percentage determined under clause (i);

20           “(II) for any cost reporting period or fiscal year  
21       beginning on or after October 1, 1985, and before Oc-  
22       tober 1, 1986, the applicable percentage increase shall  
23       be the percentage determined under clause (i), plus  
24       one-quarter of one percentage point; and

1           “(III) for any cost reporting period or fiscal year  
2       beginning on or after October 1, 1986, the applicable  
3       percentage increase shall be the percentage determined  
4       under clause (i), plus one percentage point.

5           “(iii) In the case of a subsection (d) hospital, for any cost  
6       reporting period or fiscal year beginning on or after October  
7       1, 1984, and before October 1, 1986, the applicable percent-  
8       age increase—

9           “(I) except for purposes of subsection (d)(3)(A),  
10       shall be the percentage determined under clause (i),  
11       minus one-half of one percentage point; and

12           “(II) for purposes of subsection (d)(3)(A), shall be  
13       the percentage determined under clause (i), plus one-  
14       half of one percentage point.”.

15       (b)(1) Section 1886(d)(3)(A) of such Act is amended by  
16       striking out “fiscal year 1985” and inserting in lieu thereof  
17       “fiscal years 1985 and 1986”.

18       (2) Paragraphs (2), (3), (4), and (5) of section 1886(e) of  
19       such Act are each amended by striking out “fiscal year  
20       1986” and inserting in lieu thereof “fiscal year 1987”.

21       (c) Subparagraphs (A)(ii) and (B)(ii) of section  
22       1886(e)(1) of the Social Security Act are amended by insert-  
23       ing after “Amendments of 1983” the following: “but as  
24       amended (in subsection (b)(3)(B)) by section 905(a) of the  
25       Omnibus Reconciliation Act of 1983”.

1 (d) The amendments made by this section shall apply to  
2 cost reporting periods beginning in, and discharges occurring  
3 in, fiscal year 1985 and thereafter.

4 FEE SCHEDULE FOR CLINICAL LABORATORY  
5 SERVICES

6 SEC. 906. (a) Section 1833(a)(1)(D) of the Social Secu-  
7 rity Act is amended to read as follows: “(D) with respect to  
8 diagnostic laboratory tests for which payment is made under  
9 this part, the amount paid shall be equal to 80 percent (or  
10 100 percent, in the case of such tests for which payment is  
11 made on the basis of an assignment described in section  
12 1842(b)(3)(B)(ii) of the lesser of the amount determined  
13 under subsection (h) or the amount of the charges billed for  
14 the tests;”.

15 (b) Section 1833(a)(2) of such Act is amended—

16 (1) in subparagraph (B), by inserting “or (D)”  
17 after “subparagraph (C)”;

18 (2) by striking out “and” at the end of subpara-  
19 graph (B);

20 (3) by adding “and” at the end of subparagraph  
21 (C); and

22 (4) by adding at the end thereof the following new  
23 subparagraph:

24 “(D) with respect to diagnostic laboratory  
25 tests for which payment is made under this part,

1           other than such tests performed by a provider of  
2           services for an inpatient of such provider, the  
3           amount paid shall be equal to 80 percent (or 100  
4           percent, in the case of such tests for which pay-  
5           ment is made on the basis of an assignment de-  
6           scribed in section 1842(b)(3)(B)(ii) or a provider  
7           agreement under section 1866) of the lesser of the  
8           amount determined under subsection (h) or the  
9           amount of the charges billed for the tests;”.

10       (c) Section 1833(b) of the Social Security Act is amend-  
11       ed by striking out “and” at the end of clause (2) and by  
12       inserting before the period at the end of clause (3) the follow-  
13       ing: “, and (4) such deductible shall not apply with respect to  
14       diagnostic tests for which payment is made on the basis of an  
15       assignment described in section 1842(b)(3)(B)(ii) or a provid-  
16       er agreement under section 1866 and to which subsection (h)  
17       of this section applies”.

18       (d) Section 1833(h) of such Act is amended to read as  
19       follows:

20       “(h)(1) The Secretary shall establish fee schedules for  
21       diagnostic laboratory tests for which payment is made under  
22       this part, other than such tests performed by a provider of  
23       services for an inpatient of such provider. Such schedules  
24       shall be established on areawide bases as established by the  
25       Secretary.

1       “(2) The Secretary shall set the fee schedule at 60 per-  
2 cent (or, in the case of a test performed in a hospital labora-  
3 tory, 62 percent) of the prevailing charges paid under this  
4 part for the area for similar diagnostic laboratory tests during  
5 the fee screen year beginning July 1, 1983, adjusted annually  
6 by a percentage increase or decrease equal to the percentage  
7 increase or decrease in the Consumer Price Index for All  
8 Urban Consumers (United States city average). The Secre-  
9 tary may make adjustments or exceptions to the fee schedule  
10 to assure adequate reimbursement of: (A) emergency labora-  
11 tory tests needed for the provision of bona fide emergency  
12 services in a hospital emergency room; and (B) certain low  
13 volume high-cost tests where highly sophisticated equipment  
14 and extremely skilled personnel are necessary to assure qual-  
15 ity.

16       “(3) In the case of a bill or request for payment for a  
17 diagnostic laboratory test for which payment may otherwise  
18 be made under this part, payment may be made only to the  
19 person or entity which performed or supervised the perform-  
20 ance of such test. In the case of such a bill or request for  
21 payment which is not based upon an assignment described in  
22 section 1842(b)(3)(B) or a provider agreement under section  
23 1866, payment may be made to the beneficiary only on the  
24 basis of the itemized bill of the person or entity which per-  
25 formed or supervised the performance of the test.”.



1           (e) Section 1842 of such Act is amended by striking out  
2 subsection (h) thereof.

3           (f)(1) Except as provided in paragraph (3), the amend-  
4 ments made by this section shall apply only with respect to  
5 diagnostic laboratory tests furnished on or after May 1, 1984,  
6 and before October 1, 1987.

7           (2) With respect to diagnostic laboratory tests furnished  
8 on or after October 1, 1987, payment under part B of title  
9 XVIII of the Social Security Act shall be made in accord-  
10 ance with the provisions of such part as they would be in  
11 effect if the amendments made by this section had not been  
12 enacted.

13           (3) The provisions of section 1833(h)(3) as added by this  
14 section shall remain in effect on and after October 1, 1987.

15           (g) The Secretary of Health and Human Services shall  
16 simplify the procedures under section 1842 of the Social Se-  
17 curity Act with respect to claims and payments for diagnostic  
18 laboratory tests so as to reduce unnecessary paperwork while  
19 assuring that sufficient information is supplied to prevent  
20 fraud and abuse.

21           (h) The Secretary of Health and Human Services shall  
22 report to the Congress prior to June 30, 1985, with respect  
23 to—

(1) recommendations with respect to direct payment of all fees for diagnostic laboratory tests to the physician under title XVIII of the Social Security Act;

(2) any possible basis for the formulation of a nationwide fee schedule for diagnostic laboratory tests under such title; and

(3) any appropriate indexing mechanism for adjusting such a fee schedule.

#### REVALUATION OF ASSETS ACQUIRED BY HOSPITALS

SEC. 907. (a) Section 1886(g) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

“(3) The Secretary shall provide that in any case in which a hospital (including subsection (d) hospitals and other hospitals) acquires any asset which had been depreciated in whole or in part by the prior owner for purposes of payment under this title, the payments to the purchasing hospital under this title (with respect to inpatient and outpatient services) for capital-related costs of that asset (depreciation, equity capital, and interest) shall be based upon book value (that is the acquisition cost of the asset as carried on the books of the prior owner less any depreciation taken on the asset by such prior owner) and shall be determined using the

1 same useful life and method of depreciation as used by such  
2 prior owner for purposes of payment under this title.”.

3 (b) Section 1886(g)(2) of such Act is amended by insert-  
4 ing “except as otherwise provided in paragraph (3), and”  
5 after “March 1, 1983,”.

6 (c) The amendments made by this section shall apply to  
7 capital-related costs of capital expenditures obligated on or  
8 after October 1, 1984.

## 9 REPEAL OF PREADMISSION DIAGNOSTIC

### 10 TESTING PROVISION

11 SEC. 908. (a) Section 1833(a)(1) of the Social Security  
12 Act is amended by striking out “(F) with respect to” and all  
13 that follows through “(G)” and inserting in lieu thereof “and  
14 (F)”.

15 (b) Section 1833(a) of such Act is amended—

16 (1) by adding “and” at the end of paragraph (3);

17 (2) by striking out “; and” at the end of para-  
18 graph (4) and inserting in lieu thereof a period; and

19 (3) by striking out paragraph (5).

20 (c) Section 1833(a)(2) of such Act is amended by strik-  
21 ing out “and in paragraph (5) of this subsection”.

22 (d) Section 1833(b) and section 1833(i)(3) of such Act  
23 are each amended by striking out “subsection (a)(1)(G)” and  
24 inserting in lieu thereof “subsection (a)(1)(F)”.

1 (e) The amendments made by this section shall apply to  
2 services performed after the date of the enactment of this  
3 Act.

4 (f) The amendments made by this section shall not be  
5 construed as prohibiting payment, subject to the applicable  
6 copayments, under part B of title XVIII of the Social Secu-  
7 rity Act for preadmission diagnostic testing performed in a  
8 physician's office to the extent such testing is otherwise reim-  
9 bursable under regulations of the Secretary.

#### 10 **SKILLED NURSING FACILITY REIMBURSEMENT**

11 **SEC. 909.** (a)(1) Section 1861(v)(1)(E) of the Social Se-  
12 curity Act is amended by striking out clause (i) thereof, and  
13 by striking out "(ii)".

14 (2) Section 1861(v)(7) of such Act is amended by adding  
15 at the end thereof the following new subparagraph:

16 "(D) For further limitations on reasonable cost and de-  
17 termination of payment amounts for routine service costs of  
18 skilled nursing facilities, see section 1888."

19 (b) Title XVIII of the Social Security Act is amended  
20 by adding at the end thereof the following new section:

#### 21 **"PAYMENT TO SKILLED NURSING FACILITIES** 22 **FOR ROUTINE SERVICE COSTS**

23 "SEC. 1888. (a) The Secretary, in determining the  
24 amount of the payments which may be made under this title  
25 with respect to routine service costs of extended care services

1 shall not recognize as reasonable (in the efficient delivery of  
2 health services) per diem costs of such services to the extent  
3 that such per diem costs exceed the following per diem limits,  
4 except as otherwise provided in this section:

5           “(1) With respect to free standing skilled nursing  
6 facilities located in urban areas, the limit shall be equal  
7 to 112 percent of the mean per diem routine service  
8 costs for free standing skilled nursing facilities located  
9 in urban areas.

10           “(2) With respect to free standing skilled nursing  
11 facilities located in rural areas, the limit shall be equal  
12 to 112 percent of the mean per diem routine service  
13 costs for free standing skilled nursing facilities located  
14 in rural areas.

15           “(3) With respect to hospital-based skilled nursing  
16 facilities located in urban areas, the limit shall be equal  
17 to the sum of the limit for free standing skilled nursing  
18 facilities located in urban areas, plus 50 percent of the  
19 amount by which 112 percent of the mean per diem  
20 routine service costs for hospital-based skilled nursing  
21 facilities located in urban areas exceeds the limit for  
22 free standing skilled nursing facilities located in urban  
23 areas.

24           “(4) With respect to hospital-based skilled nursing  
25 facilities located in rural areas, the limit shall be equal



1 to the sum of the limit for free standing skilled nursing  
2 facilities located in rural areas, plus 50 percent of the  
3 amount by which 112 percent of the mean per diem  
4 routine service costs for hospital-based skilled nursing  
5 facilities located in rural areas exceeds the limit for  
6 free standing skilled nursing facilities located in rural  
7 areas.

8 In applying this subsection the Secretary shall make appro-  
9 priate adjustments to the labor related portion of the costs  
10 based upon an appropriate wage index.

11 “(b) With respect to a hospital-based skilled nursing fa-  
12 cility, the Secretary shall recognize as reasonable the portion  
13 of the cost differences between hospital-based and freestand-  
14 ing skilled nursing facilities attributable to excess overhead  
15 allocations (as determined by the Secretary) resulting from  
16 the reimbursement principles under this title, notwithstanding  
17 the limits set forth in paragraph (3) or (4) of subsection (a).

18 “(c) The Secretary may make adjustments in the limits  
19 set forth in subsection (a) with respect to any skilled nursing  
20 facility to the extent the Secretary deems appropriate, based  
21 upon case mix or circumstances beyond the control of the  
22 facility.”.

23 (c) The amendments made by subsections (a) and (b)  
24 shall apply to cost reporting periods beginning on or after  
25 July 1, 1984.

1       (d) Notwithstanding limits on the cost of skilled nursing  
2 facilities which may have been issued under section 1861(v)  
3 of the Social Security Act prior to the date of the enactment  
4 of this Act, in the case of cost reporting periods beginning on  
5 or after October 1, 1982, and prior to July 1, 1984, the cost  
6 limits for routine services for urban and rural hospital-based  
7 skilled nursing facilities shall be 112 percent of the mean of  
8 the respective routine costs for urban and rural hospital-  
9 based skilled nursing facilities.

10       (e) The Secretary of Health and Human Services shall  
11 submit to the Congress, prior to April 15, 1984, the report  
12 required under section 605(b) of the Social Security Amend-  
13 ments of 1983.

14       (f) The Secretary of Health and Human Services shall  
15 submit to the Congress, prior to December 1, 1984, a pro-  
16 posal for the implementation of a prospective payment plan  
17 for extended care services under title XVIII of the Social  
18 Security Act. The plan shall take into account case mix dif-  
19 ferences among skilled nursing facilities. The plan shall be  
20 designed so as to permit inclusion of payments to hospital-  
21 based facilities within the DRG payment system under sec-  
22 tion 1886(d) of such Act. The plan shall be designed for im-  
23 plementation effective October 1, 1985.

## ROUNDING OF PART B PAYMENTS

SEC. 910. (a) Section 1833 of the Social Security Act is amended by adding at the end thereof the following new subsection:

“(k) Whenever payment under this part is made on the basis of the reasonable charge for the service, the amount of the payment, as determined after application of the provisions of section 1842 relating to the calculation of the reasonable charge and after the application of any deductibles and copayments, shall, if not a whole dollar amount, be rounded down to the next lower whole dollar amount. Where a payment is for more than one related service provided to the same patient, this subsection shall be applied to the total payment, rather than to each service separately. Any person or provider receiving such payment on the basis of an assignment described in section 1842(b)(3)(B)(ii) or under a provider agreement under section 1866, may not charge to the beneficiary the amount by which the payment is reduced under this subsection.”.

(b) The amendment made by this section shall apply to payments for services performed on or after July 1, 1984.

## AGREEMENTS FOR MEDICARE CLAIMS

## PROCESSING

SEC. 911. (a)(1) Section 1816(a) of the Social Security Act is amended by striking out the first sentence and insert-

1 ing in lieu thereof the following: "The Secretary may enter  
2 into an agreement with any organization or agency under  
3 which such organization or agency shall make determinations  
4 of the amounts of the payments to be made under this part to  
5 the providers it serves, and shall make such payments to such  
6 providers. Determinations of the amounts of payment shall be  
7 subject to section 1878 and to such review by the Secretary  
8 as may be provided for in the agreement."

9 (2) Section 1816(d) of such Act is repealed.

10 (3) Paragraphs (1) and (2) of section 1816(e) of such Act  
11 are each amended by striking out "Notwithstanding subsec-  
12 tions (a) and (d), the Secretary" and inserting in lieu thereof  
13 "The Secretary".

14 (4) Section 1816(e)(4) of such Act is amended by strik-  
15 ing out "subsections (a) and (d) and".

16 (b)(1) Section 1816(c) of such Act is amended by strik-  
17 ing out "of so much of the cost of administration of the  
18 agency or organization as is determined by the Secretary to  
19 be necessary and proper for carrying out the functions cov-  
20 ered by the agreement" and inserting in lieu thereof "to the  
21 organization for carrying out the functions covered by the  
22 agreement in accordance with such terms as the Secretary  
23 and the organization or agency shall agree upon".

24 (2) Section 1816(f) of such Act is amended—

25 (A) by inserting "(1)" after "(f)";

1 (B) by redesignating clauses (1) and (2) as clauses  
2 (A) and (B), respectively;

3 (C) by striking out “, by regulation,”; and

4 (D) by adding at the end thereof the following  
5 new paragraph:

6 “(2) Subject to the standards, criteria, and procedures  
7 developed pursuant to paragraph (1), the Secretary may uti-  
8 lize competitive and noncompetitive procedures for determin-  
9 ing with whom he shall enter into an agreement under this  
10 section, and may experiment with innovative techniques for  
11 carrying out agreements under this section.”.

12 (c)(1) Section 1842(c) of such Act is amended by strik-  
13 ing out “of the cost of administration of the carrier, as deter-  
14 mined by the Secretary to be necessary and proper for carry-  
15 ing out the functions covered by the contract” and inserting  
16 in lieu thereof “to the carrier for carrying out the functions  
17 covered by the contract in accordance with such terms as the  
18 Secretary and the carrier shall agree upon”.

19 (2) Section 1842 of such Act is amended by adding at  
20 the end thereof the following new subsection:

21 “(i) The Secretary may utilize competitive and noncom-  
22 petitive procedures for determining with whom he shall enter  
23 into a contract under this section, and may experiment with  
24 innovative techniques for carrying out such contracts.”.



1 (d) The amendments made by this section shall become  
2 effective on October 1, 1984.

3 LESSER OF COST OR CHARGES

4 SEC. 912. The Secretary of Health and Human Serv-  
5 ices shall issue regulations which require, for purposes of title  
6 XVIII of the Social Security Act, that hospitals calculate  
7 and report the lesser-of-cost-or-charges determinations sepa-  
8 rately on the basis of inpatient and outpatient services, and  
9 that payment under such title be based upon such separate  
10 determinations. Such regulations shall apply to cost account-  
11 ing periods beginning on or after October 1, 1984.

12 HEPATITIS B VACCINE

13 SEC. 913. (a) The first sentence of section 1881(b)(1) of  
14 the Social Security Act is amended by striking out "and"  
15 before "(B)" and by inserting before the period the following:  
16 ", and (C) payments to or on behalf of such individuals for  
17 hepatitis B vaccine and its administration".

18 (b) Section 1881(b) of such Act is amended by adding at  
19 the end thereof the following new paragraph:

20 "(11) Hepatitis B vaccine and its administration shall be  
21 included as dialysis services with respect to individuals who  
22 are receiving dialysis services at or through a renal dialysis  
23 facility, and payment for such vaccine and its administration  
24 shall be made in such manner and amount as the Secretary  
25 determines to be appropriate, which may include the inclu-

1 sion within the prospective payment amount established  
2 under paragraph (7). Such vaccine and its administration,  
3 when furnished to an individual who is receiving dialysis  
4 services, but not at or through a renal dialysis facility, shall  
5 be included as physicians' services, and payment shall be  
6 made in accordance with paragraph (3).''.

7 (c)(1) Section 1862(a)(1)(B) of such Act is amended by  
8 inserting "or section 1881(b)(1)(C)" after "1861(s)(10)".

9 (2) Section 1862(a)(7) of such Act is amended by insert-  
10 ing ", section 1881(b)(1)(C)," after "1861(s)(10)".

11 (d) The amendments made by this section shall apply  
12 with respect to hepatitis vaccine administered on or after  
13 July 1, 1984.

14 (e) The Secretary of Health and Human Services shall  
15 adjust, effective with respect to services provided on or after  
16 the date of the enactment of this Act, the comprehensive fee  
17 or other basis of payment established under section  
18 1881(b)(3)(B) of such Act, to reflect the amendments made by  
19 this section.

## 20 LIMITATION ON CERTAIN FOOT-CARE SERVICES

21 SEC. 914. (a) The Secretary of Health and Human  
22 Services shall provide, by regulation and pursuant to section  
23 1862(a) of the Social Security Act, that payment will not be  
24 made under part B of title XVIII of such Act for a physi-  
25 cian's debridement of mycotic toenails to the extent such de-

1   bridement is performed for a patient more frequently than  
2   once every sixty days, unless the medical necessity for more  
3   frequent treatment is documented by the billing physician.

4       (b) The provision of subsection (a) shall apply to services  
5   performed on or after the date of the enactment of this Act.

## 6   COVERAGE OF HEMOPHILIA CLOTTING FACTOR

7       SEC. 915. (a) Section 1861(s)(2) of the Social Security  
8   Act is amended by striking out “and” at the end of subpara-  
9   graph (G), by adding “and” at the end of subparagraph (H),  
10   and by adding at the end thereof the following new subpara-  
11   graph:

12           “(I) blood clotting factors, for hemophilia patients  
13       competent to use such factors to control bleeding with-  
14       out medical or other supervision, and items related to  
15       the administration of such factors, subject to utilization  
16       controls deemed necessary by the Secretary or neces-  
17       sary for the efficient use of such factors;”.

18       (b) The amendments made by subsection (a) shall be ef-  
19   fective with respect to items and services purchased on or  
20   after the date of the enactment of this Act.

## 21       INDEXING OF PART B DEDUCTIBLE

22       SEC. 916. (a) Section 1833 (b) of the Social Security  
23   Act is amended—

24           (1) by striking out “of \$75” and inserting in lieu  
25       thereof “determined under paragraph (2)”;

(2) by redesignating clauses (1) through (3) as clauses (A) through (C);

(3) by inserting “(1)” after “(b)”;

(4) by adding at the end thereof the following new paragraph:

“(2)(A) The part B deductible—

“(i) shall be \$75 for the calendar year 1984;

“(ii) for each of the calendar years 1985, 1986, and 1987 shall be an amount equal to \$75 increased or decreased by the percentage increase or decrease in the economic index utilized under section 1842 (b)(3) from the 12-month period which began on July 1, 1983, to the 12-month period that began on July 1 of the year preceding such calendar year (rounded to the nearest multiple of \$1, or if midway between multiples of \$1, rounded to the next higher multiple of \$1); and

“(iii) for the calendar year 1988 and each succeeding calendar year, shall be equal to the deductible for calendar year 1987.

“(B) The Secretary shall, between July 1 and October 1 of 1984, and of each year thereafter, determine and promulgate the part B deductible which shall be applicable for the following calendar year.”.

(b) The amendments made by subsection (a) shall be effective for calendar years after 1983.

(c) The Secretary of Health and Human Services shall determine and promulgate the part B deductible for calendar year 1985 as soon as possible after the date of the enactment of this Act.

5 COST SHARING FOR DURABLE MEDICAL EQUIP-  
6 MENT FURNISHED AS A HOME HEALTH  
7 BENEFIT

8 SEC. 917. (a)(1) The matter in section 1814(b) of the  
9 Social Security Act preceding paragraph (1) is amended by  
10 inserting “and other than a home health agency with respect  
11 to durable medical equipment” after “hospice care”.

12           (2) Section 1814 of such Act is amended by adding at  
13 the end thereof the following new subsection:

“Payments to Home Health Agencies for Durable Medical  
Equipment

16       “(k) The amount paid to any home health agency with  
17   respect to durable medical equipment for which payment may  
18   be made under this part shall be—

19                   “(1) the lesser of—

20 “(A) the reasonable cost of such equipment,  
21 as determined under section 1861(v), or

22                   “(B) the customary charges with respect to  
23                   such equipment,

less the amount the home health agency may charge as  
described in section 1866(a)(2)(A)(ii), but in no case



1       may the payment for such equipment exceed 80 per-  
2       cent of such reasonable cost, or

3           “(2) if such equipment is furnished by a public  
4       home health agency free of charge or at nominal  
5       charge to the public, the amount which the Secretary  
6       finds will provide fair compensation to the home health  
7       agency.”.

8       (b)(1) The matter in section 1833(a)(2)(A) of such Act  
9       preceding clause (i) is amended by inserting “(other than du-  
10      rable medical equipment)” after “home health services”.

11       (2) The matter in section 1833(a)(2)(B) of such Act pre-  
12      ceding clause (i) is amended by inserting “items and” after  
13      “other”.

14       (c) Section 1866(a)(2)(A)(ii) of such Act is amended by  
15      inserting “or which are durable medical equipment furnished  
16      as home health services” after “part B”.

17       (d)(1) The first sentence of section 1833(f)(1) of such Act  
18      is amended by striking out “as described in section  
19      1861(s)(6)”.

20       (2) Section 1833(f)(2) of such Act is amended—

21           (A) by striking out “the 20 percent” and inserting  
22      in lieu thereof “any”, and

23           (B) by striking out “under subsection (a)”.

1           (3) Section 1833 (f)(3) of such Act is amended by strik-  
2 ing out “paragraph (1)” and inserting in lieu thereof “subsec-  
3 tion (a)”.

4           (4)(A) Subsection (f) of section 1833 of such Act is re-  
5 designated as section 1889, is assigned the heading “Pur-  
6 chase of Durable Medical Equipment”, and is moved to the  
7 end of part C.

8           (B) Paragraphs (1) through (4) of section 1889 are re-  
9 designated as subsections (a) through (d).

10          (e)(1) Section 1861 (m)(5) of such Act is amended by  
11 striking out “, and the use of medical appliances” and insert-  
12 ing in lieu thereof “and durable medical equipment”.

13          (2) Section 1861(s)(6) of such Act is amended by strik-  
14 ing out everything after “durable medical equipment” up to  
15 the semicolon.

16          (3) Section 1861 of such Act is amended by inserting  
17 after subsection (m) the following:

18                               “Durable Medical Equipment

19           “(n) The term ‘durable medical equipment’ includes iron  
20 lungs, oxygen tents, hospital beds, and wheelchairs (which  
21 may include a power-operated vehicle that may be appropri-  
22 ately used as a wheelchair, but only where the use of such a  
23 vehicle is determined to be necessary on the basis of the indi-  
24 vidual’s medical and physical condition and the vehicle meets  
25 such safety requirements as the Secretary may prescribe)

1 used in the patient's home (including an institution used as  
 2 his home other than an institution that meets the require-  
 3 ments of subsection (e)(1) or (j)(1) of this section), whether  
 4 furnished on a rental basis or purchased.”.

5 (4) Section 1861(cc)(1)(G) of such Act is amended by  
 6 striking out “, appliances, and equipment, including the pur-  
 7 chase or rental of equipment” and inserting in lieu thereof  
 8 “and durable medical equipment”.

9 (f) Section 1814(j)(2) of such Act is amended—

10 (1) by redesignating subparagraphs (B) and (C) as  
 11 (C) and (D), respectively, and

12 (2) by inserting the following after subparagraph  
 13 (A):

14 “(B) Subsection (k)(1)(B).”.

15 (g) The amendments made by this section shall apply to  
 16 items and services furnished on or after the date of the enact-  
 17 ment of this Act.

## 18 TRANSFERS TO FEDERAL HOSPITAL INSURANCE 19 TRUST FUND

20 SEC. 918. Section 1817 of the Social Security Act is  
 21 amended by adding at the end thereof the following new sub-  
 22 section:

23 “(k) There shall be transferred for each of the fiscal  
 24 years 1984, 1985, 1986, and 1987, from the general fund in  
 25 the Treasury into the Federal Hospital Insurance Trust Fund

1 amounts equal to the additional amounts which would have  
 2 been included in the Government contribution for such fiscal  
 3 year to the Federal Supplementary Medical Insurance Trust  
 4 Fund under section 1844 for months beginning with July  
 5 1984 if the amendments made by part I of subtitle A of title  
 6 IX of the Omnibus Reconciliation Act of 1983 had not been  
 7 enacted (as estimated by the Secretary of Health and Human  
 8 Services).”.

9       PART II—MEDICAID AND MCH BUDGET PROVISIONS

10               EXTENSION OF MEDICAID PAYMENT

11                       REDUCTIONS AND OFFSETS

12       SEC. 921. (a) Section 1903(s)(1)(A) of the Social Secu-  
 13 rity Act is amended by striking out “and” at the end of  
 14 clause (ii), by adding “and” at the end of clause (iii), and by  
 15 inserting after clause (iii) the following:

16               “(iv) each of the fiscal years 1985, 1986, and  
 17       1987, shall be reduced by 3 percent,”.

18       (b) Section 1903(t)(1) of such Act is amended—

19               (1) by striking out “and 1984” and inserting in  
 20 lieu thereof “1984, 1985, 1986, and 1987”;

21               (2) by inserting “and” at the end of subparagraph  
 22 (A); and

23               (3) by striking out subparagraphs (B) and (C) and  
 24 inserting in lieu thereof the following:

1           “(B) 1983, 1984, 1985, 1986, or 1987, is equal  
2       to the target amount determined under subparagraph  
3       (A) for the State, increased or decreased by a percent-  
4       age equal to the percentage increase or decrease (as  
5       the case may be) in the index of the medical care ex-  
6       penditure category of the Consumer Price Index for all  
7       urban consumers (U.S. city average) published by the  
8       Bureau of Labor Statistics for the period beginning on  
9       October 1, 1982, and ending on the last day of the  
10      fiscal year for which the target is being computed.”.

11      (c) Section 1903(t)(2) of such Act is amended by striking  
12      out “1985” and inserting in lieu thereof “1988”.

13      (d) Section 1903(t)(3) of such Act is amended by insert-  
14      ing “(A)” after “(3)” and by adding at the end thereof the  
15      following new subparagraph:

16      “(B) Only for purposes of computing under this subsec-  
17      tion the Federal share of expenditures for a State for fiscal  
18      years 1985, 1986, and 1987 (in the case of the payments  
19      which may be made for the first quarter of fiscal years 1986,  
20      1987, and 1988, respectively), the Federal medical assist-  
21      ance percentage for fiscal years 1985, 1986, and 1987 shall  
22      be the lower of the Federal medical assistance percentage for  
23      the State in effect for fiscal year 1981, or the Federal medi-  
24      cal assistance percentage for the State in effect for the fiscal  
25      year for which such expenditures are being computed.”.



1 (e)(1) Section 1903(t) of such Act is amended by adding  
2 at the end thereof the following new paragraph:

3 “(4)(A) Except as provided in subparagraph (B), this  
4 subsection and paragraph (2) of subsection (s) shall not apply  
5 with respect to any payments based upon a claim (or adjust-  
6 ment to a claim) for a State expenditure which is submitted  
7 to the Secretary for payment after the end of the 24-month  
8 period beginning after the calendar quarter in which such ex-  
9 penditure was made.

10 “(B) Subparagraph (A) shall not apply to a State for a  
11 fiscal year if the total net amount of the claims (and adjust-  
12 ments) submitted by such State during that fiscal year which  
13 would otherwise be excluded under subparagraph (A) exceeds  
14 \$5,000,000.”.

15 (2) The amendment made by paragraph (1) shall apply  
16 to claims submitted on or after October 1, 1984.

17 (f) Section 2161 of the Omnibus Budget Reconciliation  
18 Act of 1981 is amended by striking out subsection (c).

19 MANDATORY ASSIGNMENT OF RIGHTS OF  
20 PAYMENT BY MEDICAID RECIPIENTS

21 SEC. 922. (a) Section 1902(a) of the Social Security Act  
22 is amended—

23 (1) by striking out “and” at the end of paragraph

24 (43);

1           (2) by striking out the period at the end of para-  
2       graph (44) and inserting in lieu thereof “; and”; and

3           (3) by inserting after paragraph (44) the following  
4       new paragraph:

5           “(45) provide for mandatory assignment of rights  
6       of payment for medical support and other medical care  
7       owed to recipients, in accordance with section 1912.”.

8       (b) Section 1912(a) of such Act is amended by striking  
9       out “State plan for medical assistance may” and inserting in  
10      lieu thereof “State plan for medical assistance shall”.

11      (c)(1) Except as provided in paragraph (2), the amend-  
12      ments made by this section shall become effective on October  
13      1, 1984.

14      (2) In the case of a State plan for medical assistance  
15      under title XIX of the Social Security Act which the Secre-  
16      tary of Health and Human Services determines requires  
17      State legislation in order for the plan to meet the additional  
18      requirements imposed by the amendments made by this sec-  
19      tion, the State plan shall not be regarded as failing to comply  
20      with the requirements of such title solely on the basis of its  
21      failure to meet these additional requirements before the first  
22      day of the first calendar quarter beginning after the close of  
23      the first regular session of the State legislature that begins  
24      after the date of the enactment of this Act.

1 INCREASE IN MEDICAID CEILING AMOUNT FOR  
2 PUERTO RICO, THE VIRGIN ISLANDS, GUAM,  
3 THE NORTHERN MARIANA ISLANDS, AND  
4 AMERICAN SAMOA

5 SEC. 923. (a) Section 1108(c) of the Social Security Act  
6 is amended to read as follows:

7 “(c) The total amount certified by the Secretary under  
8 title XIX with respect to a fiscal year for payment to—

9 “(1) Puerto Rico shall not exceed \$63,400,000;

10 “(2) the Virgin Islands shall not exceed  
11 \$2,100,000;

12 “(3) Guam shall not exceed \$2,000,000;

13 “(4) the Northern Mariana Islands shall not  
14 exceed \$550,000; and

15 “(5) American Samoa shall not exceed  
16 \$1,150,000.”.

17 (b) The amendment made by subsection (a) shall be ef-  
18 fective for fiscal years beginning on or after October 1, 1983.

19 INCREASE IN AUTHORIZATION FOR MATERNAL  
20 AND CHILD HEALTH BLOCK GRANT

21 SEC. 924. (a) Section 501(a) of the Social Security Act  
22 is amended by striking out “\$373,000,000 for fiscal year  
23 1982 and for each fiscal year thereafter” and inserting in lieu  
24 thereof “\$452,000,000 for fiscal year 1984, \$453,000,000

1 for fiscal year 1985, and \$455,000,000 for fiscal year 1986  
2 and each fiscal year thereafter”.

3 (b) The amendment made by subsection (a) shall be ef-  
4 fective for fiscal years beginning on or after October 1, 1983.

#### 5 MEDICAID COVERAGE FOR PREGNANT WOMEN

6 SEC. 925. (a)(1) Section 406(g)(2) of the Social Security  
7 Act is amended by striking out “may provide” and inserting  
8 in lieu thereof “shall provide”.

9 (2) Section 1902(a)(10)(A)(i) of such Act is amended by  
10 striking out “as authorized in section 406(g)” and inserting in  
11 lieu thereof “as required in section 406(g)(2)”.

12 (b)(1) Except as provided in paragraph (2), the amend-  
13 ments made by this section shall become effective on July 1,  
14 1984.

15 (2) In the case of a State plan for medical assistance  
16 under title XIX of the Social Security Act which the Secre-  
17 tary of Health and Human Services determines requires  
18 State legislation in order for the plan to meet the additional  
19 requirements imposed by the amendments made by this sec-  
20 tion, the State plan shall not be regarded as failing to comply  
21 with the requirements of such title solely on the basis of its  
22 failure to meet these additional requirements before the first  
23 day of the first calendar quarter beginning after the close of  
24 the first regular session of the State legislature that begins  
25 after the date of the enactment of this Act.

1     **RECERTIFICATION OF SNF AND ICF PATIENTS**

2           SEC. 926. (a)(1) Section 1903(g)(1) of the Social Secu-  
3 rity Act is amended, in the matter preceding subparagraph  
4 (A), by—

5           (A) striking out “, skilled nursing facility or inter-  
6 mediate care facility on 60 days” and inserting in lieu  
7 thereof “or intermediate care facility for 60 days, or in  
8 a skilled nursing facility for 30 days”;

9           (B) striking out “, skilled nursing facility services,  
10 or intermediate care facility services furnished beyond  
11 60 days (or inpatient mental hospital services furnished  
12 beyond 90 days)” and inserting in lieu thereof “or in-  
13 termediate care facility services furnished beyond 60  
14 days, skilled nursing facility services furnished beyond  
15 30 days, or inpatient mental hospital services furnished  
16 beyond 90 days”; and

17           (C) striking out “which for purposes of this sec-  
18 tion means the four calendar quarters ending with  
19 June 30,”.

20           (2) Section 1903(g)(1)(A) of such Act is amended by  
21 striking out “at least every 60 days” and inserting in lieu  
22 thereof “at least as often as required under paragraph (7)”.

23           (3) Section 1903(g) of such Act is amended by adding at  
24 the end thereof the following new paragraph:



1       “(7)(A) Recertifications under paragraph (1)(A) shall be  
2 required at least every 60 days in the case of inpatient hospi-  
3 tal services.

4       “(B) Such recertifications in the case of skilled nursing  
5 facility services shall be required at least—

6           “(i) 30 days after the initial certification,

7           “(ii) 60 days after the initial certification,

8           “(iii) 90 days after the initial certification, and

9           “(iv) every 60 days thereafter.

10       “(C) Such recertifications in the case of intermediate  
11 care facility services shall be required at least—

12           “(i) 60 days after the initial certification,

13           “(ii) 120 days after the initial certification,

14           “(iii) 12 months after the initial certification,

15           “(iv) 18 months after the initial certification,

16           “(v) 24 months after the initial certification, and

17           “(vi) every 12 months thereafter.

18       “(D) For purposes of determining compliance with the  
19 schedule established by this paragraph, the Secretary shall  
20 not consider any violation of such schedule in any case where  
21 there is a delay of 10 days or less, and the State establishes  
22 good cause why the physician or other person making such  
23 recertification did not meet such schedule.”.

24       (b) Section 1903(g)(4) of such Act is amended by adding  
25 at the end thereof the following new subparagraph:

1       “(C) The Secretary shall find a showing of a State, with  
2   respect to a calendar quarter under paragraph (1), to be satis-  
3   factory under such paragraph with respect to the require-  
4   ments of subparagraphs (A) and (B) of such paragraph as  
5   applicable to a type of facility or institutional services, if the  
6   total number of patients receiving such type of services in  
7   that quarter whose records were included in sample onsite  
8   surveys conducted with respect to that quarter under para-  
9   graph (2) and were found not to comply with the require-  
10   ments of subparagraphs (A) and (B) of paragraph (1) is less  
11   than 3 percent of the total number of patients whose records  
12   were included in such surveys with respect to that quarter.”.

13       (c) Section 1903(g)(5) of such Act is amended by strik-  
14   ing out “33½ per centum” and inserting in lieu thereof “5  
15   percent”.

16       (d) The amendments made by this section shall apply to  
17   quarters beginning on or after the date of the enactment of  
18   this Act.

19   PART III—OTHER MEDICARE AND MEDICAID PROVISIONS  
20   STUDY OF PHYSICIAN REIMBURSEMENT FOR  
21   COGNITIVE SERVICES

22       SEC. 931. The Director of the Office of Technology As-  
23   sessment shall conduct a study of physician reimbursement  
24   under the medicare program with respect to any inequities  
25   that may exist between reimbursement levels for medical pro-

1 cedures and cognitive services, and shall make any recom-  
2 mendations for changes in such reimbursement system which  
3 may be appropriate. The study shall include specific findings  
4 and recommendations with respect to creating a method for  
5 adjusting payments to physicians as the costs and risks to  
6 physicians of providing services decrease over time due to  
7 new technologies and procedures. In carrying out the study,  
8 the Director shall consult with national physician organiza-  
9 tions and with the Secretary of Health and Human Services.  
10 The Director shall report the results of such study to the  
11 Congress prior to December 31, 1985.

12 ELIMINATION OF PART B DEDUCTIBLE FOR  
13 CERTAIN DIAGNOSTIC LABORATORY TESTS

14 SEC. 932. (a) Section 1833(b) of the Social Security Act  
15 is amended by striking out "and" at the end of clause (2), and  
16 by inserting before the period at the end of clause (3) the  
17 following: ", and (4) such deductible shall not apply with re-  
18 spect to diagnostic tests performed in a laboratory for which  
19 the Secretary has established a payment rate under subsec-  
20 tion (h)".

21 (b) Section 1833(h) of such Act, as such section shall be  
22 in effect on and after October 1, 1987, is amended by insert-  
23 ing before the period at the end thereof the following: "(in-  
24 cluding any deductibles which would have been made under  
25 subsection (b))".

1 (c) The amendments made by this section shall apply  
2 with respect to diagnostic tests performed on or after October  
3 1, 1987.

4 PAYMENT FOR SERVICES FOLLOWING TERMINA-  
5 TION OF PARTICIPATION AGREEMENTS  
6 WITH HOME HEALTH AGENCIES

7 SEC. 933. (a) Section 1866(b)(4)(B) of the Social Secu-  
8 rity Act is amended by striking out "after the calendar year  
9 in which such termination is effective" and inserting in lieu  
10 thereof "more than 30 days after such effective date".

11 (b) The amendment made by this section shall apply to  
12 terminations issued on or after the date of the enactment of  
13 this Act.

14 REPEAL OF SPECIAL TUBERCULOSIS TREAT-  
15 MENT REQUIREMENTS UNDER MEDICARE  
16 AND MEDICAID

17 SEC. 934. (a) Section 1814(a) of the Social Security Act  
18 is amended—

19 (1) by repealing subparagraph (B) of paragraph  
20 (2);

21 (2) in paragraph (3), by striking out "and inpa-  
22 tient tuberculosis hospital services";

23 (3) by repealing paragraph (5); and

24 (4) in the matter following paragraph (8), by strik-  
25 ing out "(B)".

1       (b)(1) Subsections (d) and (g) of section 1861 of such Act  
2 are repealed.

3       (2) Section 1861(e) of such Act is amended in the  
4 matter following paragraph (9) by striking out “or tuberculo-  
5 sis unless it is a tuberculosis hospital (as defined in subsection  
6 (g)) or”.

7       (3) Section 1861(j) of such Act is amended in the matter  
8 following paragraph (15) by striking out “or tuberculosis”.

9       (c) Section 1863 of such Act is amended by striking out  
10 “(g)(4),”.

11       (d) Section 1866 of such Act is amended—

12               (1) in subsection (b)(3), by striking out “tuberculo-  
13 sis hospital services and”; and

14               (2) in subsection (d), by striking out “inpatient tu-  
15 berculosis hospital services and”.

16       (e) Section 1902(a)(28) of such Act is amended by strik-  
17 ing out “and tuberculosis”.

18       (f) Section 1903(g)(1) of such Act is amended by striking  
19 out “(including an institution for tuberculosis)”, and by strik-  
20 ing out “(including tuberculosis hospitals)”.

21       (g) Section 1905(a) of such Act is amended by striking  
22 out “tuberculosis or” each place it appears in paragraphs (1),  
23 (4)(A), (14), (15), and (18)(B).

24       (h) The amendments made by this section shall become  
25 effective on the date of the enactment of this Act.



1       MEDICARE RECOVERY AGAINST CERTAIN  
2                   THIRD PARTIES

3       SEC. 935. (a) Section 1862(b)(1) of the Social Security  
4 Act is amended—

5           (1) in the first sentence, by inserting “promptly”  
6 after “to be made”;

7           (2) in the second sentence, by inserting “or could  
8 be” after “has been”; and

9           (3) by inserting after the second sentence the fol-  
10 lowing new sentences: “In order to recover payment  
11 made under this title for an item or service, the United  
12 States may bring an action against any entity that  
13 would be responsible for payment with respect to such  
14 item or service (or any portion thereof) under such a  
15 law, policy, plan, or insurance, or against any individu-  
16 al or entity that has been paid with respect to such  
17 item or service under such law, policy, plan, or insur-  
18 ance, and may join or intervene in any action related  
19 to the events that gave rise to the need for such item  
20 or service. The United States shall be subrogated (to  
21 the extent of payment made under this title for an item  
22 or service) to any right of the individual or any other  
23 entity to payment with respect to such item or service  
24 under such a law, policy, plan, or insurance.”.

25       (b) Section 1862(b)(2)(B) of such Act is amended—

1 (1) in the first sentence, by inserting “or could  
2 be” after “has been”; and

3 (2) by inserting after the first sentence the follow-  
4 ing new sentences: “In order to recover payment made  
5 under this title for an item or service, the United  
6 States may bring an action against any entity that  
7 would be responsible for payment with respect to such  
8 item or service (or any portion thereof) under such a  
9 plan, or against any individual or entity that has been  
10 paid with respect to such item or service under such  
11 plan, and may join or intervene in any action related to  
12 the events that gave rise to the need for such item or  
13 service. The United States shall be subrogated (to the  
14 extent of payment made under this title for an item or  
15 service) to any right of the individual or any other  
16 entity to payment with respect to such item or service  
17 under such a plan.”.

18 (c) Section 1862(b)(3)(A)(ii) of such Act is amended—

19 (1) in the first sentence, by inserting “or could  
20 be” after “has been”; and

21 (2) by inserting after the first sentence the follow-  
22 ing new sentences: “In order to recover payment made  
23 under this title for an item or service, the United  
24 States may bring an action against any entity that  
25 would be responsible for payment with respect to such

1 item or service (or any portion thereof) under such a  
2 plan, or against any individual or entity that has been  
3 paid with respect to such item or service under such  
4 plan, and may join or intervene in any action related to  
5 the events that gave rise to the need for such item or  
6 service. The United States shall be subrogated (to the  
7 extent of payment made under this title for an item or  
8 service) to any right of the individual or any other  
9 entity to payment with respect to such item or service  
10 under such a plan.”.

11 (d) The amendments made by this section shall become  
12 effective on the date of the enactment of this Act.

### 13 INDIRECT PAYMENT OF SUPPLEMENTARY

### 14 MEDICAL INSURANCE BENEFITS

15 SEC. 936. (a) The first sentence of section 1842(b)(6), as  
16 so redesignated by section 202 of this Act, is amended by  
17 inserting before the period at the end thereof the following: “,  
18 or (C) to an entity (i) which provides coverage of the service  
19 under a health benefits plan (to the extent that payment is  
20 not made under this part), (ii) which has paid the person who  
21 provided the service an amount which includes the amount  
22 payable under this part and which that person has accepted  
23 as payment in full for such service, and (iii) to which the  
24 individual has agreed in writing that payment may be made  
25 under this part”.

1 (b) The second sentence of section 1842(b)(6) is amend-  
2 ed by striking out “(i)” and “(ii)” and inserting in lieu thereof  
3 “(I)” and “(II)”, respectively.

4 (c) The amendments made by this section shall become  
5 effective on the date of the enactment of this Act.

## 6 ELIMINATION OF HEALTH INSURANCE

### 7 BENEFITS ADVISORY COUNCIL

8 SEC. 937. (a) Section 1867 of the Social Security Act is  
9 repealed.

10 (b)(1) The first sentence of section 1863 of such Act is  
11 amended by striking out “the Health Insurance Benefits Ad-  
12 visory Council established by section 1867, appropriate State  
13 agencies,” and inserting in lieu thereof “appropriate State  
14 agencies”.

15 (2) The first sentence of section 7(d)(4) of the Railroad  
16 Retirement Act of 1974 is amended by striking out “1867,”.

17 (3) Section 361 of the Social Security Amendments of  
18 1977 (Public Law 95-216) is amended by striking out sub-  
19 section (i).

20 (c) The amendments made by this section shall become  
21 effective on the date of the enactment of this Act.

## 22 CONFIDENTIALITY OF ACCREDITATION

### 23 SURVEYS

24 SEC. 938. (a) Section 1865(a) of the Social Security Act  
25 is amended—

1 (1) in paragraph (2), by striking out “(on a confi-  
2 dential basis)”, and

3 (2) by adding at the end thereof the following new  
4 sentence: “The Secretary may not disclose any ac-  
5 creditation survey made and released to him by the  
6 Joint Commission on Accreditation of Hospitals, the  
7 American Osteopathic Association, or any other nation-  
8 al accreditation body, of an entity accredited by such  
9 body.”.

10 (b) The amendments made by this section shall become  
11 effective on the date of the enactment of this Act.

12 FLEXIBLE SANCTIONS FOR NONCOMPLIANCE  
13 WITH REQUIREMENTS FOR END STAGE  
14 RENAL DISEASE FACILITIES

15 SEC. 939. (a) Section 1881(c)(3) of the Social Security  
16 Act is amended by adding at the end thereof the following  
17 new sentence: “If the Secretary determines that the facility’s  
18 or provider’s failure to cooperate with network plans and  
19 goals does not jeopardize patient health or safety or justify  
20 termination of certification, he may instead, after reasonable  
21 notice to the provider or facility and to the public, impose  
22 such other sanctions as he determines to be appropriate,  
23 which sanctions may include denial of reimbursement with  
24 respect to some or all patients admitted to the facility after



1 the date of the notice, and graduated reduction in reimburse-  
2 ment for all patients.”.

3 (b) The amendment made by this section shall become  
4 effective on the date of the enactment of this Act.

5 USE OF ADDITIONAL ACCREDITING  
6 ORGANIZATIONS UNDER MEDICARE

7 SEC. 940. (a) The third sentence of section 1865(a) of  
8 the Social Security Act is amended—

9 (1) by striking out “section 1861(e), (j), (o), or  
10 (dd)” and inserting in lieu thereof “section  
11 1832(a)(2)(F)(i), 1861(e), 1861(j), 1861(o),  
12 1861(p)(4)(A) or (B), paragraphs (11) and (12) of sec-  
13 tion 1861(s), section 1861(aa)(2), 1861(cc)(2), or  
14 1861(dd)(2)”;

15 (2) by striking out “institution or agency” each  
16 place it appears and inserting in lieu thereof in each  
17 instance “entity”.

18 (b) The amendments made by this section shall become  
19 effective on the date of the enactment of this Act.

20 REPEAL OF EXCLUSION OF FOR-PROFIT ORGANI-  
21 ZATIONS FROM RESEARCH AND DEMON-  
22 STRATION GRANTS

23 SEC. 941. (a) Section 1110(a)(1) of the Social Security  
24 Act is amended by striking out “nonprofit”.

1       (b) The first sentence of section 402(a)(1) of the Social  
2 Security Amendments of 1967 (Public Law 90-248) is  
3 amended by striking out “nonprofit”.

4       (c) The amendments made by this section shall become  
5 effective on the date of the enactment of this Act.

6 REQUIREMENTS FOR MEDICAL REVIEW AND IN-  
7 DEPENDENT PROFESSIONAL REVIEW  
8 UNDER MEDICAID

9       SEC. 942. (a) Section 1902(a)(31) of such Act is amend-  
10 ed to read as follows:

11           “(31) with respect to skilled nursing facilities (and  
12 with respect to intermediate care facility services,  
13 where the State plan includes medical assistance for  
14 such services) provide—

15           “(A) with respect to each patient receiving  
16 such assistance, for a written plan of care, prior  
17 to admission to or authorization of benefits in such  
18 facility, in accordance with regulations of the Sec-  
19 retary, and for a regular program of independent  
20 professional review (including medical evaluation)  
21 which shall periodically review his need for such  
22 care;

23           “(B) with respect to each facility within the  
24 State, for periodic onsite inspections of the care  
25 being provided to each person receiving medical

1 assistance, by one or more independent profes-  
2 sional review teams (composed of a physician or  
3 registered nurse and other appropriate health and  
4 social service personnel), including with respect to  
5 each such person (i) the adequacy of the services  
6 available to meet his current health needs and  
7 promote his maximum physical well-being, (ii) the  
8 necessity and desirability of his continued place-  
9 ment in the facility, and (iii) the feasibility of  
10 meeting his health care needs through alternative  
11 institutional or noninstitutional services; and

12 “(C) for full reports to the State agency by  
13 each independent professional review team of the  
14 findings of each inspection under subparagraph  
15 (B), together with any recommendations;”.

16 (b) Section 1902(a)(26) of the Social Security Act is  
17 amended to read as follows:

18 “(26) if the State plan includes medical assistance  
19 for inpatient mental hospital services provide—

20 “(A) with respect to each patient receiving  
21 such assistance, for a regular program of medical  
22 review (including medical evaluation) of his need  
23 for such care, and for a written plan of care;

24 “(B) for periodic inspections to be made in  
25 all mental institutions within the State by one or

1 more medical review teams (composed of physi-  
2 cians and other appropriate health and social  
3 service personnel) of the care being provided to  
4 each person receiving such assistance, including (i)  
5 the adequacy of the services available to meet his  
6 current health needs and promote his maximum  
7 physical well-being, (ii) the necessity and desir-  
8 ability of his continued placement in the institu-  
9 tion, and (iii) the feasibility of meeting his health  
10 care needs through alternative institutional or  
11 noninstitutional services; and

12 “(C) for full reports to the State agency by  
13 each medical review team of the findings of each  
14 inspection under subparagraph (B), together with  
15 any recommendations;”.

16 (c) Section 1902(a) of such Act is amended, in the  
17 matter following paragraph (45)—

18 (1) by striking out “, (26)” after “(9)(A)”; and

19 (2) by striking out “the term ‘skilled nursing fa-  
20 cility’ and ‘nursing home’ ” and inserting in lieu there-  
21 of “the terms ‘skilled nursing facility’, ‘intermediate  
22 care facility’, and ‘nursing home’ ”.

23 (d) The amendments made by this section shall become  
24 effective on the date of the enactment of this Act.

1 FLEXIBILITY IN SETTING PAYMENT RATES FOR  
2 HOSPITALS FURNISHING LONG-TERM CARE  
3 SERVICES UNDER MEDICAID

4 SEC. 943. (a) Section 1913(b) of the Social Security Act  
5 is amended to read as follows:

6 “(b) Payment to any such hospital, for any skilled nurs-  
7 ing or intermediate care facility services furnished pursuant  
8 to subsection (a), shall be at a payment rate established by  
9 the State in accordance with the requirements of section  
10 1902(a)(13)(A). Such rate may, but need not, be the same as  
11 any rate established by the State for such services furnished  
12 by a skilled nursing or intermediate care facility.”.

13 (b) The amendment made by this section shall become  
14 effective on the date of the enactment of this Act.

15 AUTHORITY OF THE SECRETARY TO ISSUE AND  
16 ENFORCE SUBPENAS UNDER MEDICAID

17 SEC. 944. (a) Title XIX of the Social Security Act is  
18 amended by adding at the end thereof the following new  
19 section:

20 “APPLICATION OF PROVISIONS OF TITLE II  
21 RELATING TO SUBPENAS

22 “SEC. 1918. The provisions of subsections (d) and (e) of  
23 section 205 of this Act shall apply with respect to this title to  
24 the same extent as they are applicable with respect to title  
25 II.”.



1       (b) The amendment made by this section shall become  
2 effective on the date of the enactment of this Act.

3 REPEAL OF AUTHORITY FOR PAYMENTS TO PRO-  
4 MOTE CLOSING AND CONVERSION OF UN-  
5 DERUTILIZED HOSPITAL FACILITIES

6 SEC. 945. (a)(1) Section 1884 of the Social Security Act  
7 is repealed.

8       (2) Section 1903(e) of such Act is repealed.

9       (b) The amendments made by this section shall become  
10 effective on the date of the enactment of this Act, but shall  
11 not apply to any transitional allowance established by the  
12 Secretary of Health and Human Services under section 1884  
13 of the Social Security Act before the date of the enactment of  
14 this Act.

15 PRESIDENTIAL APPOINTMENT OF AND PAY  
16 LEVEL FOR THE ADMINISTRATOR OF THE  
17 HEALTH CARE FINANCING ADMINISTRA-  
18 TION

19 SEC. 946. (a) Title XI of the Social Security Act is  
20 amended by inserting after section 1116 the following new  
21 section:

1 "APPOINTMENT OF THE ADMINISTRATOR OF  
2 THE HEALTH CARE FINANCING ADMINIS-  
3 TRATION

4 "SEC. 1117. The Administrator of the Health Care Fi-  
5 nancing Administration shall be appointed by the President  
6 by and with the advice and consent of the Senate."

7 (b) Section 5315 of title 5, United States Code, is  
8 amended by adding at the end thereof the following:

9 "Administrator of the Health Care Financing Ad-  
10 ministration."

11 (c) The amendments made by this section shall apply to  
12 appointments made after the date of the enactment of this  
13 Act.

14 EXCLUSION OF CERTAIN ENTITIES OWNED OR  
15 CONTROLLED BY INDIVIDUALS CONVICTED  
16 OF MEDICARE- OR MEDICAID-RELATED  
17 CRIMES

18 SEC. 947. (a) Section 1128 of the Social Security Act is  
19 amended—

20 (1) by redesignating subsections (b), (c), and (d) as  
21 subsections (c), (d), and (e), respectively, and

22 (2) by inserting after subsection (a) the following  
23 new subsection:

24 "(b) Whenever the Secretary determines, with respect  
25 to an entity, that a person who has a direct or indirect own-

1 ership or control interest of 5 percent or more in the entity,  
2 or who is an officer, director, agent, or managing employee  
3 (as defined in section 1126(b)) of such entity, is a person de-  
4 scribed in section 1126(a), the Secretary—

5           “(1) may bar from participation in the program  
6       under title XVIII, for such period as he may deem ap-  
7       propriate, each such entity otherwise eligible to partici-  
8       pate in such program;

9           “(2) shall promptly notify each appropriate State  
10       agency administering or supervising the administration  
11       of a State plan approved under title XIX of the fact  
12       and circumstances of the determination, and may  
13       require each such agency to bar the entity from par-  
14       ticipation in the program for such period as he may  
15       specify, which in the case of an entity specified in  
16       paragraph (1), may not exceed the period established  
17       pursuant to paragraph (1); and

18           “(3) shall promptly notify the appropriate State or  
19       local agency or authority having responsibility for the  
20       licensing or certification of such entity of the fact and  
21       circumstances of such determination, request that ap-  
22       propriate investigations be made and sanctions invoked  
23       in accordance with applicable State law and policy,  
24       and request that such State or local agency or authori-  
25       ty keep the Secretary and the Inspector General of the

1 Department of Health and Human Services fully and  
2 currently informed with respect to any actions taken in  
3 response to such request.”.

4 (b) Section 1128(e) of such Act (as redesignated by sub-  
5 section (a)(1)) is amended—

6 (1) by inserting “or entity” after “Any person”,  
7 and

8 (2) by striking out “(a) or (b)” and inserting in  
9 lieu thereof “(a), (b), or (c)”.

10 (c) The amendments made by this section shall become  
11 effective on the date of the enactment of this Act.

## 12 JUDICIAL REVIEW OF PROVIDER

### 13 REIMBURSEMENT REVIEW BOARD DECISIONS

14 SEC. 948. (a) Section 602(h)(2) of the Social Security  
15 Amendments of 1983 (Public Law 98-21) is amended by  
16 adding at the end thereof the following new subparagraph:

17 “(C) Notwithstanding section 604, the amendments  
18 made by this paragraph shall be effective with respect to any  
19 appeal or action brought on or after April 20, 1983.”.

20 (b) The amendment made by this section shall be effec-  
21 tive as if it had been originally included in section 602(h)(2)  
22 of the Social Security Amendments of 1983.

## 23 ACCESS TO HOME HEALTH SERVICES

24 SEC. 949. (a) Section 1814(a) of the Social Security Act  
25 is amended by adding at the end thereof the following new

1 sentences: "For purposes of the preceding sentence, service  
2 by a physician as an uncompensated officer or director of a  
3 home health agency shall not constitute having a significant  
4 ownership interest in, or a significant financial or contractual  
5 relationship with, such agency. Such regulations shall not  
6 prohibit a physician who has a significant interest in, or a  
7 significant relationship with, an agency that is the only home  
8 health agency in a county from performing such certification  
9 and establishing or reviewing such plan with respect to indi-  
10 viduals who are furnished, or to be furnished, services by  
11 such agency."

12 (b) Section 1835(a) of such Act is amended by adding at  
13 the end thereof the following new sentences: "For purposes  
14 of the preceding sentence, service by a physician as an un-  
15 compensated officer or director of a home health agency shall  
16 not constitute having a significant ownership interest in, or a  
17 significant financial or contractual relationship with, such  
18 agency. Such regulations shall not prohibit a physician who  
19 has a significant interest in, or a significant relationship with,  
20 an agency that is the only home health agency in a county  
21 from performing such certification and establishing or review-  
22 ing such plan with respect to individuals who are furnished,  
23 or to be furnished, services by such agency."

24 (c) The amendments made by this section shall become  
25 effective on the date of the enactment of this Act.



1 PROVIDER REPRESENTATION IN PEER REVIEW  
2 ORGANIZATIONS

3 SEC. 950. (a) Section 1153(b)(3) of the Social Security  
4 Act is amended by inserting “(A)” after “(3)” and by adding  
5 at the end thereof the following new subparagraph:

6 “(B) For purposes of subparagraph (A), an entity shall  
7 not be considered to be affiliated with a health care facility or  
8 association of facilities by reason of common control if the  
9 common control consists of—

10 “(i) only one officer, governing body member, or  
11 managing employee who is common to the entity and  
12 the health care facility or association, in the case of an  
13 entity having 15 or fewer governing body members; or

14 “(ii) two or less such common officers, governing  
15 body members, or managing employees, in the case of  
16 an entity having more than 15 governing body mem-  
17 bers.”.

18 (b) The amendments made by subsection (a) shall  
19 become effective on the date of the enactment of this Act.

20 PROSPECTIVE PAYMENT ASSESSMENT  
21 COMMISSION

22 SEC. 951. (a) Section 1886 (e) (2) of the Social Security  
23 Act is amended by inserting “(without regard to the provi-  
24 sions of title 5, United States Code, governing appointments

1 in the competitive service)” after “appointed by the Direc-  
2 tor”.

3 (b) (1) Section 1886 (e) (6) (C) (i) of such Act is amended  
4 to read as follows:

5 “(i) employ and fix the compensation of an Execu-  
6 tive Director (subject to the approval of the Director of  
7 the Office) and such other personnel (not to exceed 25)  
8 as may be necessary to carry out its duties (without  
9 regard to the provisions of title 5, United States Code,  
10 governing appointments in the competitive service);”.

11 (2) Section 1886 (e) (6) (C) (iii) of such Act is amended  
12 by inserting “(without regard to section 3709 of the Revised  
13 Statutes (41 U.S.C 5))” after “Commission”.

14 (3) Section 1886 (e) (6) (C) (vi) of such Act is amended  
15 by inserting “(without regard to the provisions of the Federal  
16 Advisory Committee Act)” after “Commission”.

17 (4) Section 1886(e)(6)(D) of such Act is amended by  
18 adding at the end thereof the following sentence: “Physicians  
19 serving as personnel of the Commission may be provided a  
20 physician comparability allowance by the Commission in the  
21 same manner as Government physicians may be provided  
22 such an allowance by an agency under section 5948 of title  
23 5, United States Code, and for such purpose subsection (i) of  
24 such section shall apply to the Commission in the same  
25 manner as it applies to the Tennessee Valley Authority.”.

1 (c) Section 1886 (e) (6) of such Act is further amend-  
2 ed—

3 (1) by redesignating subparagraphs (G), (H), and  
4 (I) as subparagraphs (H), (I), and (J) , respectively;  
5 and

6 (2) by inserting after subparagraph (F) the follow-  
7 ing new subparagraph:

8 “(G) In order to supplement the activities of the Com-  
9 mission in assessing the safety, efficacy, and cost-effective-  
10 ness of new and existing medical procedures, the Secretary  
11 may carry out, or award grants or contracts for, original re-  
12 search and experimentation of the type described in clause (ii)  
13 of subparagraph (E) with respect to such a procedure if the  
14 Secretary finds that—

15 “(i) such procedure is not of sufficient commercial  
16 value to justify research and experimentation by a  
17 commercial organization;

18 “(ii) research and experimentation with respect to  
19 such procedure is not of a type that may appropriately  
20 be carried out by an institute, division, or bureau of the  
21 National Institutes of Health; and

22 “(iii) such procedure has the potential to be more  
23 cost-effective in the treatment of a condition than pro-  
24 cedures currently in use with respect to such condi-  
25 tion.”.

1 (d) Section 1886(e)(6) of such Act is further amended—

2 (1) by redesignating subparagraphs (I) and (J) (as  
3 redesignated by subsection (c)(1)) as subparagraphs (K)  
4 and (L), respectively; and

5 (2) by inserting after subparagraph (H) (as so re-  
6 designated) the following new subparagraphs:

7 “(I)(i) The Secretary shall provide the Commission with  
8 such services, equipment, and facilities (including office  
9 space, office furnishings, and financial and administrative  
10 services) as are necessary for the operation of the Commis-  
11 sion.

12 “(ii) As agreed upon by the Secretary and the Commis-  
13 sion, the Secretary shall be reimbursed, for such services,  
14 equipment, and facilities by the Commission from appropri-  
15 ations made with respect to the Commission.

16 “(J) The Commission shall submit requests for appropri-  
17 ations in the same manner as the Office submits requests for  
18 appropriations, but amounts appropriated for the Commission  
19 shall be separate from amounts appropriated for the Office.”.

20 (e) The amendments made by this section shall become  
21 effective on the date of the enactment of this Act.

## 22 MEDICAID CLINIC ADMINISTRATION

23 SEC. 952. (a) Section 1905(a)(9) of the Social Security  
24 Act is amended to read as follows:

1           “(9) clinic services furnished by or under the di-  
2           rection of a physician (but for purposes of this para-  
3           graph the clinic itself need not be administered by a  
4           physician);”.

5           (b) The amendment made by subsection (a) shall become  
6           effective on the date of the enactment of this Act.

7           **ENROLLMENT AND PREMIUM PENALTY WITH**  
8           **RESPECT TO WORKING AGED PROVISION**

9           SEC. 953. (a) The second sentence of section 1839(b) of  
10          the Social Security Act is amended by adding before the  
11          period at the end the following: “, but there shall not be  
12          taken into account months in which the individual has met  
13          the conditions specified in clauses (i) and (iii) of section  
14          1862(b)(3)(A) and can demonstrate that the individual was  
15          enrolled in a group health plan described in clause (iv) of such  
16          section by reason of the individual’s (or the individual’s  
17          spouse’s) current employment”.

18          (b) Section 1837 of such Act is amended by adding at  
19          the end the following new subsection:

20          “(i)(1) In the case of an individual who—

21                  “(A) meets the conditions described in clauses (i)  
22                  and (iii) of section 1862(b)(3)(A),

23                  “(B) at the time the individual first satisfies para-  
24                  graph (1) or (2) of section 1836, is enrolled in a group  
25                  health plan described in section 1862(b)(3)(A)(iv) by



1 reason of the individual's (or the individual's spouse's)  
2 current employment, and

3 "(C) has elected not to enroll (or to be deemed  
4 enrolled) under this section during the individual's ini-  
5 tial enrollment period,

6 there shall be a special enrollment period described in para-  
7 graph (3).

8 "(2) In the case of an individual who—

9 "(A) meets the conditions described in clauses (i)  
10 and (iii) of section 1862(b)(3)(A),

11 "(B)(i) has enrolled (or has been deemed to have  
12 enrolled) in the medical insurance program established  
13 under this part during the individual's initial enrollment  
14 period and any subsequent special enrollment period  
15 under this subsection during which the individual was  
16 not enrolled in a group health plan described in section  
17 1862(b)(3)(A)(iv) by reason of the individual's (or indi-  
18 vidual's spouse's) current employment, and

19 "(C) has not terminated enrollment under this sec-  
20 tion at any time at which the individual is not enrolled  
21 in such a group health plan by reason of the individ-  
22 ual's (or individual's spouse's) current employment,  
23 there shall be a special enrollment period described in para-  
24 graph (3).

1       “(3) The special enrollment period referred to in para-  
2 graphs (1) and (2) is the period—

3               “(A) beginning with the first day of the third  
4 month before the month in which the individual attains  
5 the age of 70 and ending seven months later, or

6               “(B) beginning with the first day of the first  
7 month in which the individual is no longer enrolled in a  
8 group health plan described in section 1862(b)(3)(A)(iv)  
9 by reason of current employment and ending seven  
10 months later,  
11 whichever period results in earlier coverage.”.

12       (c) Section 1838 of such Act is amended by adding at  
13 the end the following new subsection:

14       “(e) Notwithstanding subsection (a), in the case of an  
15 individual who enrolls during a special enrollment period pur-  
16 suant to—

17               “(1) subparagraph (A) of section 1837(i)(3)—

18               “(A) before the month in which he attains  
19 the age of 70, the coverage period shall begin on  
20 the first day of the month in which he has at-  
21 tained the age of 70, or

22               “(B) in or after the month in which he at-  
23 tains the age of 70, the coverage period shall  
24 begin on the first day of the month following the  
25 month in which he so enrolls; or

1           “(2) subparagraph (B) of section 1837(i)(3)—

2                   “(A) in the first month of the special enroll-  
3           ment period, the coverage period shall begin on  
4           the first day of such month, or

5                   “(B) in a month after the first month of the  
6           special enrollment period, the coverage period  
7           shall begin on the first day of the month following  
8           the month in which he so enrolls.”.

9           (d)(1) The amendment made by subsection (a) shall  
10   apply to months beginning with January 1983 for premiums  
11   for months beginning with the first effective month (as de-  
12   fined in paragraph (3)).

13          (2) The amendments made by subsections (b) and (c)  
14   shall apply to enrollments in months beginning with the first  
15   effective month, except that in the case of any individual who  
16   would have had a special enrollment period under section  
17   1837(i) of the Social Security Act that would have begun  
18   before such first effective month, such period shall be deemed  
19   to begin with the first day of such first effective month.

20          (3) For purposes of this subsection, the term “first effec-  
21   tive month” means the first month which begins more than  
22   ninety days after the date of the enactment of this Act.

## EMERGENCY ROOM SERVICES

SEC. 954. (a) Section 1861(v)(1)(K) of the Social Security Act is amended by inserting “(i)” after “(K)” and by adding at the end thereof the following:

“(ii) For purposes of clause (i), the term ‘bona fide emergency services’ means services provided in a hospital emergency room after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

“(I) placing the patient’s health in serious jeopardy;

“(II) serious impairment to bodily functions; or

“(III) serious dysfunction of any bodily organ or part.”.

(b) Section 1861(v)(1)(K)(i) as so designated is amended by striking out “provided in an emergency room” and inserting in lieu thereof “as defined in clause (ii)”.

(c) The amendments made by this section shall apply to services furnished on or after the date of the enactment of this Act.

1           PAYMENT FOR SERVICES OF A NURSE  
2                           ANESTHETIST

3           SEC. 955. (a) Section 1886(d)(5) of the Social Security  
4 Act is amended by adding at the end thereof the following  
5 new subparagraph:

6           “(E)(i) The Secretary shall provide for an additional  
7 payment amount for any subsection (d) hospital equal to the  
8 reasonable costs incurred by such hospital for anesthesia  
9 services provided by a certified registered nurse anesthetist,  
10 subject to the limitation in clause (ii). Payment under this  
11 subparagraph shall be the only payment made to such hospi-  
12 tal with respect to such services.

13          “(ii) The Secretary shall not recognize as reasonable  
14 any costs incurred by a subsection (d) hospital for anesthesia  
15 services provided by certified registered nurse anesthetists  
16 employed by such hospital in excess of the number of certified  
17 registered nurse anesthetists employed by such hospital for  
18 the calendar year 1982, as determined on an average basis of  
19 services per nurse anesthetist, except to the extent that the  
20 Secretary determines that the employment of additional certi-  
21 fied registered nurse anesthetists by such hospital is warrant-  
22 ed by reason of changes in patient volume, patient mix, or a  
23 loss of physician services.”.



1 (b) Section 1886(a)(4) of such Act is amended by insert-  
2 ing “, services provided by a certified registered nurse anes-  
3 thetist” after “approved education activities”.

4 (c) The amendments made by subsections (a) and (b)  
5 shall apply to cost reporting periods beginning on or after  
6 October 1, 1984.

7 (d) The Secretary of Health and Human Services shall  
8 conduct a study of possible methods of reimbursement under  
9 title XVIII of the Social Security Act which would not dis-  
10 courage the use of certified registered nurse anesthetists by  
11 hospitals. The Secretary shall report the results of such study  
12 to the Congress as soon as is practicable.

### 13 PROSPECTIVE PAYMENT WAGE INDEX

14 SEC. 956. (a) The Secretary of Health and Human  
15 Services, in consultation with the Secretary of Labor, shall  
16 conduct a study to develop an appropriate index for purposes  
17 of adjusting payment amounts under section 1886(d) of the  
18 Social Security Act to reflect area differences in average hos-  
19 pital wage levels, as required under paragraphs (2)(H) and  
20 (3)(E) of such section, taking into account wage differences of  
21 full time and part time workers. The Secretary of Health and  
22 Human Services shall report the results of such study to the  
23 Congress prior to May 1, 1984, including any changes which  
24 the Secretary determines to be necessary to provide for an  
25 appropriate index.

1       (b) The Secretary shall adjust the payment amounts for  
2 hospitals for cost reporting periods beginning on or after Oc-  
3 tober 1, 1983, to reflect any changes made in the wage index  
4 pursuant to subsection (a). Any adjustment in such payments  
5 to take account of overpayments or underpayments for the  
6 first cost reporting period of a hospital to which section  
7 1886(d) of the Social Security Act applies, shall be made by  
8 decreasing or increasing payments in the succeeding cost re-  
9 porting period.

#### 10   HOSPICE CONTRACTING FOR CORE SERVICES

11       SEC. 957. (a) Section 1861(dd)(2)(A)(ii)(I) of the Social  
12 Security Act is amended by inserting "except as otherwise  
13 provided in paragraph (5)," before "and" at the end thereof.

14       (b) Section 1861(dd) of such Act is amended by adding  
15 at the end thereof the following new paragraph:

16       “(5)(A) The Secretary may waive the requirements of  
17 paragraph (2)(A)(ii)(I) for an agency or organization with re-  
18 spect to all or part of the nursing care described in paragraph  
19 (1)(A) if such agency or organization—

20               “(i) is located in an area which is not an urban-  
21 ized area (as defined by the Bureau of the Census);

22               “(ii) was in operation on or before January 1,  
23 1983; and

1           “(iii) has demonstrated a good faith effort (as de-  
2       termined by the Secretary) to hire a sufficient number  
3       of nurses to provide such nursing care directly.

4       “(B) Any waiver requested by an agency or organiza-  
5       tion under subparagraph (A) shall be deemed to be granted  
6       unless such request is denied by the Secretary within 60 days  
7       after such request is received by the Secretary. The granting  
8       of a waiver under subparagraph (A) shall not preclude the  
9       granting of any subsequent waiver request should such a  
10      waiver again become necessary.”.

11       (c) The amendments made by subsections (a) and (b)  
12      shall become effective on the date of the enactment of this  
13      Act.

14       (d) The Secretary of Health and Human Services shall  
15      conduct a study of the necessity and appropriateness of the  
16      requirements that certain “core” services be furnished direct-  
17      ly by a hospice, as required under section 1861(dd)(2)(A)(ii)(I)  
18      of the Social Security Act. The Secretary shall report the  
19      results of such study to the Congress within 18 months after  
20      the date of the enactment of this Act.

21      EXEMPTION OF PUBLIC PSYCHIATRIC HOSPI-  
22      TALS FROM PROVISION LIMITING REIM-  
23      BURSEMENT TO SNF RATES

24       SEC. 958. The provisions of section 1902(a)(13) of the  
25      Social Security Act, insofar as they require a reduction of the

1 amount of payment otherwise to be made to a public psychi-  
2 atric hospital due to the level of care received in such hospi-  
3 tal, shall not apply to payments to hospitals before July 1,  
4 1985, and such a reduction made for payments during the  
5 twelve-month period ending June 30, 1986, and during the  
6 twelve-month period ending June 30, 1987, shall be one-  
7 third and two-thirds, respectively, of the amount of the re-  
8 duction which would have been made without regard to this  
9 section.

## 10 CERTIFICATION OF PSYCHIATRIC HOSPITALS

11 SEC. 959. (a) Section 1861(f) of the Social Security Act  
12 is amended—

13 (1) by adding “and” at the end of paragraph (3);

14 (2) by striking out “; and” at the end of para-  
15 graph (4) and inserting in lieu thereof a period;

16 (3) by striking out paragraph (5); and

17 (4) in the second sentence thereof, by striking out  
18 “if the institution is accredited” and all that follows,  
19 and inserting in lieu thereof a period.

20 (b) Section 1865(a) of such Act is amended by inserting  
21 “(f),” after “1861(e),” in the matter following paragraph (4).

22 (c) Section 1905(h)(1)(A) of such Act is amended to read  
23 as follows:

1           “(A) inpatient services which are provided in an  
2           institution (or distinct part thereof) which is a psychiat-  
3           ric hospital as defined in section 1861(f);”.

4           (d) The amendments made by this section shall become  
5           effective on the date of the enactment of this Act.

## 6           PAYMENTS TO TEACHING PHYSICIANS

7           SEC. 960. (a) Section 1842(b)(6)(A)(ii) of the Social Se-  
8           curity Act is amended to read as follows:

9           “(ii) to the extent that the amount of the payment  
10          exceeds the greater of (I) the reasonable charge for the  
11          services (with the customary charge determined con-  
12          sistent with subparagraph (B)), or (II) 75 percent of  
13          the prevailing charge for the services in the locality.”.

14          (b) The amendment made by subsection (a) shall become  
15          effective on the date of the enactment of this Act.

## 16          PACEMAKER REIMBURSEMENT REVIEW AND 17          REFORM

18          SEC. 961. (a) Not later than April 1, 1984, the Secre-  
19          tary of Health and Human Services (hereafter in this section  
20          referred to as the “Secretary”) shall issue revisions to the  
21          current guidelines for the payment under part B of title  
22          XVIII of the Social Security Act for the transtelephonic  
23          monitoring of cardiac pacemakers. Such revised guidelines  
24          shall include provisions regarding the specifications for and



1 frequency of transtelephonic monitoring procedures which  
2 will be found to be reasonable and necessary.

3 (b) Not later than April 1, 1984, the Secretary shall  
4 review, and report to the Committees on Energy and Com-  
5 merce and Ways and Means of the House of Representatives  
6 and the Committee on Finance of the Senate, regarding the  
7 appropriateness of the current rate of reimbursement under  
8 part A of title XVIII of the Social Security Act for inpatient  
9 hospital services associated with implantation or replacement  
10 of pacemaker devices and pacemaker leads, and under part B  
11 of such title for physicians' services associated with such im-  
12 plantations and replacements. Such review shall take into ac-  
13 count the amounts recognized as reasonable with respect to  
14 such procedures and the time and difficulty of such proce-  
15 dures at the current time in comparison with such amounts  
16 and the time and difficulty of such procedures at the time the  
17 rates for such procedures were first established under such  
18 title.

19 (c)(1) The Secretary shall provide for the establishment  
20 and maintenance by the Administrator of the Food and Drug  
21 Administration of a registry of all cardiac pacemaker devices  
22 and pacemaker leads produced by any manufacturer for  
23 which payment was made under this title. Such registry shall  
24 include, with respect to each such device or lead, the model,  
25 serial number, and the name of the recipient of such device or

1 lead, the date and location of the implantation or removal of  
2 such device or lead, the name of the physician involved in  
3 implanting or removing such device or lead, the name of the  
4 hospital or other provider billing for such procedure, any ex-  
5 press on implied warranties associated with such device or  
6 lead, and such other information as the Secretary deems to  
7 be appropriate. Submission of the information required for the  
8 registry by a manufacturer shall be a condition for any pay-  
9 ment under title XVIII of the Social Security Act with re-  
10 spect to any devices or leads produced by such manufacturer.  
11 The registry shall be for the purposes of assisting the Secre-  
12 tary in determining when payments may properly be made  
13 under this title, tracing the performance of cardiac pacemaker  
14 devices and leads, determining when inspection by the Food  
15 and Drug Administration may be necessary under paragraph  
16 (3), and carrying out studies with respect to the use of such  
17 devices and leads. In carrying out any such study, the Secre-  
18 tary may not reveal any specific information which identifies  
19 any pacemaker device or lead recipient by name (or which  
20 would otherwise identify a specific recipient).

21       (2) As a condition for payment being made for the im-  
22 plant or replacement of a cardiac pacemaker device or lead,  
23 the Secretary may, by regulation, require that a provider  
24 shall furnish to a manufacturer of cardiac pacemaker devices  
25 and pacemaker leads information with respect to all patients

1 bearing a device or lead produced by such manufacturer for  
2 which payment was made or requested by such provider  
3 under title XVIII of the Social Security Act. The Secretary  
4 may also require that any device or lead removed from any  
5 such patient be returned to the manufacturer of such device  
6 or lead. An organization serving as a fiscal intermediary for a  
7 provider may, under regulations prescribed by the Secretary,  
8 deny payment for the replacement of a device or lead if such  
9 provider fails to return such device or lead in accordance  
10 with the preceding sentence, and such provider may not  
11 charge the beneficiary for such replacement. Charging a pa-  
12 tient in violation of the preceding sentence shall constitute a  
13 violation of the provider's agreement under section 1866 of  
14 the Social Security Act.

15       (3) The Secretary may, by regulation, as a condition for  
16 payment under title XVIII of the Social Security Act with  
17 respect to any devices or leads produced by a manufacturer,  
18 require the manufacturer to test or analyze each returned  
19 cardiac pacemaker device or lead for which payment is made  
20 or requested under such title and provide the results of such  
21 test or analysis to the provider who returned it to the manu-  
22 facturer, together with information and documentation with  
23 respect to any warranties covering such device or lead. In  
24 any case where the Secretary has reason to believe, based  
25 upon information in a pacemaker registry or otherwise avail-

1 able to him, that replacement of a cardiac pacemaker device  
2 or lead for which payment is or may be requested under such  
3 title is related to the malfunction of such device or lead, the  
4 Secretary may require that personnel of the Food and Drug  
5 Administration test such device, or be present at the testing  
6 of such device by such manufacturer, to determine whether  
7 such device or lead was functioning properly.

8 (4) A manufacturer of cardiac pacemaker devices and  
9 pacemaker leads shall post a bond or provide such other as-  
10 surances as the Secretary deems appropriate to ensure that  
11 such manufacturer will comply with the requirements of this  
12 subsection.

13 (5) The Secretary may by regulation require any manu-  
14 facturer of cardiac pacemaker devices and pacemaker leads to  
15 provide to the Food and Drug Administration—

16 (A) a written report with respect to any adverse  
17 reaction to a device or lead and any device or lead  
18 defect, of which such manufacturer is notified (within  
19 ten days of the date on which such manufacturer is so  
20 notified); and

21 (B) an annual written report summarizing clinical  
22 experiences with devices and leads, including informa-  
23 tion on all removals, deaths, adverse reactions, device  
24 or lead defects, and the results of tests performed on  
25 all returned devices and leads.

1       (6) For purposes of this subsection, the term “manufac-  
2 turer” shall have the meaning given to such term in regula-  
3 tions promulgated by the Food and Drug Administration.

4 OPEN ENROLLMENT PERIOD FOR HEALTH MAIN-  
5 TENANCE ORGANIZATIONS AND COMPETI-  
6 TIVE MEDICAL PLANS

7 SEC. 962. (a) Section 1876(c)(3)(A) of the Social Secu-  
8 rity Act is amended—

9       (1) by inserting “(i)” after “(3)(A)”.

10       (2) by inserting “and including the 30-day period  
11 specified under clause (ii)” after “30 days duration  
12 every year”, and

13       (3) by adding at the end the following new clause:

14       “(ii) For each area served by more than one eligible  
15 organization under this section, the Secretary (after consulta-  
16 tion with such organizations) shall establish a single 30-day  
17 period each year during which all eligible organizations serv-  
18 ing the area must provide for open enrollment under this sec-  
19 tion. The Secretary shall determine annual per capita rates  
20 under subsection (a)(1)(A) in a manner that assures that indi-  
21 viduals enrolling during such a 30-day period will not have  
22 premium charges increased or any additional benefits de-  
23 creased during the 12-month enrollment period for which the  
24 individual is enrolling. An eligible organization may provide



1 for such other open enrollment period or periods as it deems  
2 appropriate consistent with this section.”.

3 (b) The amendments made by subsection (a) shall  
4 become effective on the date of the enactment of this Act.

5 (c) The Secretary of Health and Human Services may  
6 phase in, over a period of not longer than three years, the  
7 application of the amendments made by subsection (a) to all  
8 applicable areas in the United States if the Secretary deter-  
9 mines that it is not administratively feasible to establish a  
10 single thirty-day open enrollment period for all such applica-  
11 ble areas before the end of the period.

## 12 WAIVERS FOR SOCIAL HEALTH MAINTENANCE 13 ORGANIZATION

14 SEC. 963. (a) In the case of a project described in sub-  
15 section (b), the Secretary of Health and Human Services  
16 shall approve, with appropriate terms and conditions as de-  
17 fined by the Secretary, applications or protocols submitted for  
18 waivers described in subsection (c), and the evaluation of  
19 such protocols, in order to carry out such project. Such ap-  
20 proval shall be effected not later than 30 days after the date  
21 on which the application or protocol for a waiver is submitted  
22 or not later than 30 days after the date of the enactment of  
23 this Act in the case of an application or protocol submitted  
24 before the date of the enactment of this Act.

25 (b) A project referred to in subsection (a) is a project—

1           (1) to demonstrate the concept of a social health  
2 maintenance organization with the organizations as de-  
3 scribed in Project No. 18-P-9.7604/1 of the University  
4 Health Policy Consortium of Brandeis University;

5           (2) which provides for the integration of health  
6 and social services under the direct financial manage-  
7 ment of a provider of services;

8           (3) under which all medicare services will be pro-  
9 vided by or under arrangements made by the organiza-  
10 tion at a fixed annual prepaid capitation rate for medi-  
11 care of 100 percent of the adjusted average per capita  
12 cost;

13           (4) under which medicaid services will be provided  
14 at a rate approved by the Secretary;

15           (5) under which all payors will share risk for no  
16 more than two years, with the organization being at  
17 full risk in the third year;

18           (6) which is being provided funds under a grant  
19 provided by the Secretary of Health and Human Serv-  
20 ices; and

21           (7) with respect to which substantial private funds  
22 are being provided other than under the grant referred  
23 to in paragraph (5).

24       (c) The waivers referred to in subsection (a) are appro-  
25 priate waivers of—

1           (1) certain requirements of title XVIII of the  
2       Social Security Act, pursuant to section 402(a) of the  
3       Social Security Amendments of 1967 (as amended by  
4       section 222 of the Social Security Amendments of  
5       1972); and

6           (2) certain requirements of title XIX of the Social  
7       Security Act, pursuant to section 1115 of such Act.

#### 8           FUNDING FOR PSRO REVIEW

9       SEC. 964. (a) Section 1866(a)(1)(F) of the Social Secu-  
10     rity Act is amended by inserting "with a professional stand-  
11     ards review organization (if there is such an organization in  
12     existence in the area in which the hospital is located) or"  
13     after "maintain an agreement".

14       (b) Notwithstanding section 604(a)(2) of the Social Se-  
15     curity Amendments of 1983, the requirement that a hospital  
16     maintain an agreement with a utilization and quality control  
17     peer review organization, as contained in section  
18     1866(a)(1)(F) of the Social Security Act, shall become effec-  
19     tive on January 1, 1985.

20       (c)(1) Section 1153(b)(2)(A) of the Social Security Act  
21     is amended by striking out "During the first twelve months  
22     in which the Secretary is entering into contracts under this  
23     section" and inserting in lieu thereof "Prior to January 1,  
24     1985".

1       (2) Section 1153(b)(2)(B) of such Act is amended by  
2 striking out “after the expiration of the twelve-month period  
3 referred to in subparagraph (A)” and inserting in lieu thereof  
4 “after December 31, 1984”.

5       (3) Section 1153(b)(2) of such Act is amended by strik-  
6 ing out subparagraph (C).

7       (d) The provisions of, and amendments made by, this  
8 section shall become effective on May 1, 1984.

9 MEDICARE TECHNICAL AMENDMENTS RELAT-  
10 ING TO THE SOCIAL SECURITY AMEND-  
11 MENTS OF 1983

12       SEC. 965. (a)(1) Section 1818(c) of the Social Security  
13 Act is amended by striking out “subsection (a) of section  
14 1839” and inserting in lieu thereof “subsection (b) of section  
15 1839”.

16       (2) Section 1866(a)(1)(F) of such Act is amended by  
17 striking out “(c) or (d)” and inserting in lieu thereof “(b), (c),  
18 or (d)”.

19       (3) Section 1886(c)(4)(A) of such Act is amended by  
20 striking out “and (D)” and inserting in lieu thereof “(D) and  
21 (E)”.

22       (4) Section 1886(e)(5) of such Act is amended—

23               (A) by striking out “for public comment” in the  
24 matter preceding subparagraph (A); and

1 (B) by inserting “for public comment” in subpara-  
2 graph (A) after “that fiscal year,”.

3 (b) Section 604(c)(3) of the Social Security Amendments  
4 of 1983 is amended by striking out “to implement subsection  
5 (d) of section 1886 of the Social Security Act (as so amend-  
6 ed)” and inserting in lieu thereof “to implement the amend-  
7 ments made by this title”.

8 (c) The amendments made by the preceding provisions  
9 of this section shall be effective as though they had been  
10 originally included in the Social Security Amendments of  
11 1983.

12 (d) Section 1878(f)(1) of such Act is amended by striking  
13 out “such determination is rendered” and inserting in lieu  
14 thereof “notification of such determination is received”.

15 SUBTITLE B—INCOME MAINTENANCE PROVISIONS  
16 PARENTS AND SIBLINGS OF DEPENDENT CHILD  
17 INCLUDED IN AFDC FAMILY

18 SEC. 971. (a) Section 402(a) of the Social Security Act  
19 is amended—

20 (1) by striking out “and” at the end of paragraph  
21 (35);

22 (2) by striking out the period at the end of para-  
23 graph (36) and inserting in lieu thereof “; and”; and

24 (3) by adding at the end thereof the following new  
25 paragraphs:



1           “(37) provide that in making the determination  
2           under paragraph (7) with respect to a dependent child  
3           and applying paragraph (8), the State agency shall  
4           (except as otherwise provided in this part) include—

5                   “(A) any parent of such child, and

6                   “(B) any brother or sister of such child, if  
7           such brother or sister meets the conditions de-  
8           scribed in clauses (1) and (2) of section 406(a),  
9           if such parent, brother, or sister is living in the same  
10          home as the dependent child, and any income of or  
11          available for such parent, brother, or sister shall be in-  
12          cluded in making such determination and applying such  
13          paragraph with respect to the family (notwithstanding  
14          section 205(j), in the case of benefits provided under  
15          title II); and

16          “(38) provide that in making the determination  
17          under paragraph (7) with respect to a dependent child  
18          whose parent or legal guardian is under the age select-  
19          ed by the State pursuant to section 406(a)(2), the  
20          State agency shall (except as otherwise provided in  
21          this part) include any income of such minor’s own par-  
22          ents or legal guardians who are living in the same  
23          home as such minor and dependent child, to the same  
24          extent that income of a stepparent is included under  
25          paragraph (31).”.

1 (b) The amendments made by this section shall become  
2 effective on April 1, 1984.

3 HOUSEHOLDS HEADED BY MINOR PARENTS

4 SEC. 972. (a) Section 402(a) of the Social Security Act  
5 (as amended by section 971 of this Act) is further amended—

6 (1) by striking out “and” at the end of paragraph  
7 (37);

8 (2) by striking out the period at the end of para-  
9 graph (38) and inserting in lieu thereof “; and”; and

10 (3) by adding at the end thereof the following new  
11 paragraph:

12 “(39) provide—

13 “(A) that any individual who is under the  
14 age limit selected by the State pursuant to section  
15 406(a)(2) and is not and has never been married,  
16 and who is responsible for the care of a dependent  
17 child (or is pregnant and on that basis eligible for  
18 aid under the State plan) shall be eligible for aid  
19 under the plan (and such dependent child shall be  
20 eligible for such aid) only if such individual resides  
21 in a place of residence maintained by such individ-  
22 ual’s parent or legal guardian as such parent’s or  
23 guardian’s own home; except that this paragraph  
24 shall not apply to such individual if the State  
25 agency determines that—

1                   “(i) such individual has no parent or  
2                   legal guardian who is living and whose  
3                   whereabouts are known;

4                   “(ii) the health and safety of such indi-  
5                   vidual or such dependent child would be seri-  
6                   ously jeopardized if such individual lived in  
7                   the same residence with such individual’s  
8                   parent or legal guardian; or

9                   “(iii) such individual has lived apart  
10                  from his parent or legal guardian for a period  
11                  of at least one year prior to (I) the birth of  
12                  the dependent child for whose care the indi-  
13                  vidual is responsible, or (II) the making of a  
14                  claim for aid under this part, whichever is  
15                  later; and

16                  “(B) that whenever an individual to whom  
17                  this paragraph applies is eligible for aid under the  
18                  plan, the State may make payments of the type  
19                  described in section 406(b)(2) for one or more  
20                  months until such individual exceeds the age limit  
21                  selected by the State pursuant to section  
22                  406(a)(2).”.

23                  (b) The amendments made by this section shall become  
24                  effective on April 1, 1984.

## 1 CLARIFICATION OF EARNED INCOME PROVISION

2 SEC. 973. (a) Section 402(a)(8) of the Social Security  
3 Act is amended by striking out “and” at the end of subpara-  
4 graph (A), by adding “and” at the end of subparagraph (B),  
5 and by adding at the end thereof the following new subpara-  
6 graph:

7 “(C) provide that in implementing this paragraph  
8 the term ‘earned income’ shall mean gross earned  
9 income, prior to any deductions for taxes or other pur-  
10 poses;”.

11 (b) The amendments made by subsection (a) shall  
12 become effective on the date of the enactment of this Act.

## 13 CWEP WORK FOR FEDERAL AGENCIES

### 14 PERMITTED

15 SEC. 974. (a) Section 409(a) of the Social Security Act  
16 is amended by adding at the end thereof the following new  
17 paragraph:

18 “(4) (A) Participants in community work experience  
19 programs under this section may, subject to subparagraph  
20 (B), perform work in the public interest (which otherwise  
21 meets the requirements of this section) for a Federal office or  
22 agency with its consent, and, notwithstanding section 1342  
23 of title 31, United States Code, or any other provision of law,  
24 such agency may accept such services, but such participants

1 shall not be considered to be Federal employees for any pur-  
2 pose.

3 “(B) The State agency shall provide appropriate work-  
4 ers’ compensation and tort claims protection to each partici-  
5 pant performing work for a Federal office or agency pursuant  
6 to subparagraph (A).”.

7 (b) The amendment made by this section shall become  
8 effective on the date of the enactment of this Act.

#### 9 EARNED INCOME OF FULL-TIME STUDENTS

10 SEC. 975. (a) Section 402(a)(18) of the Social Security  
11 Act is amended by inserting before the semicolon at the end  
12 thereof the following: “except that, in determining the total  
13 income of the family, the State may exclude any earned  
14 income of a dependent child who is a full-time student, in  
15 such amounts and for such period of time (not to exceed six  
16 months) as the State may determine”

17 (b) The amendment made by subsection (a) shall become  
18 effective on the date of the enactment of this Act.

#### 19 ADJUSTMENTS IN SSI BENEFITS ON ACCOUNT 20 OF RETROACTIVE BENEFITS UNDER TITLE II

21 SEC. 976. (a) Section 1127 of the Social Security Act is  
22 amended to read as follows:



1 “ADJUSTMENTS IN SSI BENEFITS ON ACCOUNT  
2 OF RETROACTIVE BENEFITS UNDER TITLE II

3 “SEC. 1127. (a) Notwithstanding any other provision of  
4 this Act, in any case where an individual—

5 “(1) is entitled to benefits under title II that were  
6 not paid in the months in which they were regularly  
7 due; and

8 “(2) is an individual or eligible spouse eligible for  
9 supplemental security income benefits for one or more  
10 months in which the benefits referred to in clause (1)  
11 were regularly due,

12 then any benefits under title II that were regularly due in  
13 such month or months, or supplemental security income  
14 benefits for such month or months which are due but have  
15 not been paid to such individual or eligible spouse, shall be  
16 reduced by an amount equal to so much of the supplemental  
17 security income benefits, whether or not paid retroactively,  
18 as would not have been paid or would not be paid with re-  
19 spect to such individual or spouse if he had received such  
20 benefits under title II in the month or months in which they  
21 were regularly due.

22 “(b) For purposes of this section, the term ‘supplemental  
23 security income benefits’ means benefits paid or payable by  
24 the Secretary under title XVI, including State supplementary  
25 payments under an agreement pursuant to section 1616(a) or

1 an administration agreement under section 212(b) of Public  
2 Law 93-66.

3       “(c) From the amount of the reduction made under sub-  
4 section (a), the Secretary shall reimburse the State on behalf  
5 of which supplementary payments were made for the amount  
6 (if any) by which such State’s expenditures on account of  
7 such supplementary payments for the month or months in-  
8 volved exceeded the expenditures which the State would  
9 have made (for such month or months) if the individual had  
10 received the benefits under title II at the times they were  
11 regularly due. An amount equal to the portion of such reduc-  
12 tion remaining after reimbursement of the State under the  
13 preceding sentence shall be covered into the general fund of  
14 the Treasury.”.

15       (b) The amendment made by this section shall apply for  
16 purposes of reducing retroactive benefits under title II of the  
17 Social Security Act or retroactive supplemental security  
18 income benefits payable beginning with the seventh month  
19 following the month in which this Act is enacted; except that  
20 in the case of retroactive title II benefits other than those  
21 which result from a determination of entitlement following an  
22 application for benefits under title II or from a reinstatement  
23 of benefits under title II following a period of suspension or  
24 termination of such benefits, it shall apply when the Secre-

1 tary of Health and Human Services determines that it is ad-  
2 ministratively feasible.

### 3 REGULATORY INITIATIVE ON MEDICAL SUPPORT

4 SEC. 977. The Secretary of Health and Human Serv-  
5 ices shall issue regulations to require that State agencies ad-  
6 ministering the child support enforcement program under  
7 part D of title IV of the Social Security Act petition courts to  
8 include medical support as part of any child support order  
9 whenever health care coverage is available to the absent  
10 parent at a reasonable cost. Such regulations shall also pro-  
11 vide for improved information exchange between such State  
12 agencies and the State agencies administering the State med-  
13 icaid programs under title XIX of such Act with respect to  
14 the availability of health insurance coverage.

### 15 SUBTITLE C—OASDI PROVISIONS

### 16 SPECIAL SOCIAL SECURITY TREATMENT FOR 17 CHURCH EMPLOYEES

18 SEC. 981. (a)(1) Section 210(a)(8) of the Social Security  
19 Act is amended by inserting “(A)” after “(8)”, by striking out  
20 “this paragraph” and inserting in lieu thereof “this subpara-  
21 graph”, and by adding at the end thereof the following new  
22 subparagraph:

23 “(B) Service performed in the employ of a church  
24 or qualified church-controlled organization if such  
25 church or organization has in effect an election under

1       section 3121(w) of the Internal Revenue Code of  
2       1954, other than service in an unrelated trade or busi-  
3       ness (within the meaning of section 513(a) of such  
4       Code);”.

5       (2) Section 3121(b)(8) of the Internal Revenue Code of  
6       1954 is amended by inserting “(A)” after “(8)”, by striking  
7       out “this paragraph” and inserting in lieu thereof “this sub-  
8       paragraph”, and by adding at the end thereof the following  
9       new subparagraph:

10           “(B) service performed in the employ of a church  
11       or qualified church-controlled organization if such  
12       church or organization has in effect an election under  
13       subsection (w), other than service in an unrelated trade  
14       or business (within the meaning of section 513(a));”.

15       (b) Section 3121 of the Internal Revenue Code of 1954  
16       is amended by adding at the end thereof the following new  
17       subsection:

18       “(w) EXEMPTION OF CHURCHES AND QUALIFIED  
19       CHURCH-CONTROLLED ORGANIZATIONS.—

20           “(1) GENERAL RULE.—Any church or qualified  
21       church-controlled organization (as defined in paragraph  
22       (3)) may make an election within the time period de-  
23       scribed in paragraph (2), in accordance with such pro-  
24       cedures as the Secretary determines to be appropriate,  
25       that services performed in the employ of such church

1 or organization shall be excluded from employment for  
2 purposes of title II of the Social Security Act and  
3 chapter 21 of this Code. An election may be made  
4 under this subsection only if the church or qualified  
5 church-controlled organization states that such church  
6 or organization is opposed for religious reasons to the  
7 payment of the tax under section 3111, and only if  
8 such church or organization did not have a waiver in  
9 effect under subsection (k) on December 31, 1980.

10 “(2) TIMING AND DURATION OF ELECTION.—An  
11 election under this subsection must be made prior to  
12 the first date, more than 90 days after the date of the  
13 enactment of this subsection, on which a quarterly em-  
14 ployment tax return for the tax imposed under section  
15 3111 is due, or would be due but for the election, from  
16 such church or organization. An election under this  
17 subsection shall apply to current and future employees,  
18 and shall apply to service performed after December  
19 31, 1983. The election may not be revoked by the  
20 church or organization, but shall be permanently re-  
21 voked by the Secretary if such church or organization  
22 fails to furnish the information required under section  
23 6051 to the Secretary for a period of two years or  
24 more with respect to remuneration paid for such serv-  
25 ices by such church or organization, and, upon request



1 by the Secretary, fails to furnish all such previously  
2 unfurnished information for the period covered by the  
3 election. Such revocation shall apply retroactively to  
4 the beginning of the two-year period for which the in-  
5 formation was not furnished.

6 “(3) DEFINITIONS.—

7 “(A) For purposes of this subsection, the  
8 term ‘church’ means a church, a convention or as-  
9 sociation of churches, or an elementary or second-  
10 ary school which is controlled, operated, or princi-  
11 pally supported by a church or by a convention or  
12 association of churches.

13 “(B) For purposes of this subsection, the  
14 term ‘qualified church-controlled organization’  
15 means any church-controlled tax-exempt organiza-  
16 tion described in section 501(c)(3), other than an  
17 organization which—

18 “(i) offers goods, services, or facilities  
19 for sale, other than on an incidental basis, to  
20 the general public, other than goods, serv-  
21 ices, or facilities which are sold at a nominal  
22 charge which is substantially less than the  
23 cost of providing such goods, services, or  
24 facilities; and

1                   “(ii) normally receives more than 25  
2                   percent of its support from either (I) govern-  
3                   mental sources, or (II) receipts from admis-  
4                   sions, sales of merchandise, performance of  
5                   services, or furnishing of facilities, in activi-  
6                   ties which are not unrelated trades or busi-  
7                   nesses, or both.”.

8           (c)(1) Section 211(c)(2) of the Social Security Act is  
9 amended—

10           (A) by striking out “and” at the end of subpara-  
11 graph (E);

12           (B) by striking out the semicolon at the end of  
13 subparagraph (F) and inserting in lieu thereof “, and”;  
14 and

15           (C) by adding at the end thereof the following  
16 new subparagraph:

17           “(G) service described in section 210(a)(8)(B);”.

18           (2) Section 1402(c)(2) of the Internal Revenue Code of  
19 1954 is amended—

20           (A) by striking out “and” at the end of subpara-  
21 graph (E);

22           (B) by striking out the semicolon at the end of  
23 subparagraph (F) and inserting in lieu thereof “, and”;  
24 and

1 (C) by adding at the end thereof the following  
2 new subparagraph:

3 “(G) service described in section 3121(b)(8)(B);”.

4 (d)(1) Section 211(a) of the Social Security Act is  
5 amended—

6 (A) by striking out “and” at the end of paragraph  
7 (11);

8 (B) by striking out the period at the end of para-  
9 graph (12) and inserting in lieu thereof “; and”; and

10 (C) by inserting after paragraph (12) the following  
11 new paragraph:

12 “(13) With respect to remuneration for services  
13 which are treated as services in a trade or business  
14 under subsection (c)(2)(G)—

15 “(A) no deduction for trade or business ex-  
16 penses provided under the Internal Revenue Code  
17 of 1954 (other than the deduction under para-  
18 graph (11) of this subsection) shall apply;

19 “(B) the provisions of subsection (b)(2) shall  
20 not apply; and

21 “(C) if the amount of such remuneration  
22 from an employer for the taxable year is less than  
23 \$100, such remuneration from that employer shall  
24 not be included in self-employment income.”.

1       (2) Section 1402(a) of the Internal Revenue Code of  
2 1954 is amended—

3           (A) by striking out “and” at the end of paragraph  
4 (12);

5           (B) by striking out the period at the end of para-  
6 graph (13) and inserting in lieu thereof “; and”; and

7           (C) by inserting after paragraph (13) the following  
8 new paragraph:

9           “(14) With respect to remuneration for services  
10 which are treated as services in a trade or business  
11 under subsection (c)(2)(G)—

12           “(A) no deduction for trade or business ex-  
13 penses provided under this Code (other than the  
14 deduction under paragraph (12)) shall apply;

15           “(B) the provisions of subsection (b)(2) shall  
16 not apply; and

17           “(C) if the amount of such remuneration  
18 from an employer for the taxable year is less than  
19 \$100, such remuneration from that employer shall  
20 not be included in self-employment income.”.

21       (e) The amendments made by this section shall apply to  
22 service performed after December 31, 1983.

23       (f) In any case where a church or qualified church-con-  
24 trolled organization makes an election under section 3121(w)  
25 of the Internal Revenue Code of 1954, the Secretary of the

1 Treasury shall refund (without interest) to such church or  
2 organization any taxes paid under sections 3101 and 3111 of  
3 such Code with respect to service performed after December  
4 31, 1983, which is covered under such election. The refund  
5 shall be conditional upon the church or organization agreeing  
6 to pay to each employee (or former employee) the portion of  
7 the refund attributable to the tax imposed on such employee  
8 (or former employee) under section 3101, and such employee  
9 (or former employee) may not receive any other refund pay-  
10 ment of such taxes.

11 SOCIAL SECURITY COVERAGE FOR LEGISLATIVE  
12 BRANCH EMPLOYEES NOT COVERED BY THE  
13 CIVIL SERVICE RETIREMENT SYSTEM

14 SEC. 982. (a)(1) Clause (v) of section 210(a)(5) of the  
15 Social Security Act is amended to read as follows:

16 “(v) any other service in the legislative  
17 branch of the Federal Government if such  
18 service (I) is performed by an individual who  
19 was not subject to subchapter III of chapter  
20 83 of title 5, United States Code, on Decem-  
21 ber 31, 1983, or (II) is performed by an indi-  
22 vidual who has, at any time after December  
23 31, 1983, received a lump-sum payment  
24 under section 8342(a) of title 5, United  
25 States Code, or (III) is performed by an indi-



vidual after such individual has otherwise  
ceased to be subject to subchapter III of  
chapter 83 of title 5, United States Code, or  
does not have an application pending for coverage under such subchapter, for any period  
of time after December 31, 1983, while performing service in the legislative branch of  
the Federal Government (determined without regard to the provisions of subparagraph (B)  
relating to continuity of employment for individuals who return to service within 365  
days); and for purposes of this clause, an individual shall be 'subject to subchapter III of  
chapter 83 of title 5, United States Code', only if such individual's pay is subject to deductions and contributions (concurrent with  
the performance of the service) under section 8334(a) of such title 5, or such individual is  
receiving an annuity from the Civil Service Retirement and Disability Fund (for service  
as an employee);".

(2) Clause (v) of section 3121(b)(5) of the Internal Revenue Code of 1954 is amended to read as follows:

“(v) any other service in the legislative  
branch of the Federal Government if such

1 service (I) is performed by an individual who  
2 was not subject to subchapter III of chapter  
3 83 of title 5, United States Code, on Decem-  
4 ber 31, 1983, or (II) is performed by an indi-  
5 vidual who has, at any time after December  
6 31, 1983, received a lump-sum payment  
7 under section 8342(a) of title 5, United  
8 States Code, or (III) is performed by an indi-  
9 vidual after such individual has otherwise  
10 ceased to be subject to subchapter III of  
11 chapter 83 of title 5, United States Code, or  
12 does not have an application pending for cov-  
13 erage under such subchapter, for any period  
14 of time after December 31, 1983, while per-  
15 forming service in the legislative branch of  
16 the Federal Government (determined without  
17 regard to the provisions of subparagraph (B)  
18 relating to continuity of employment for indi-  
19 viduals who return to service within 365  
20 days); and for purposes of this clause, an in-  
21 dividual shall be 'subject to subchapter III of  
22 chapter 83 of title 5, United States Code',  
23 only if such individual's pay is subject to de-  
24 ductions and contributions (concurrent with  
25 the performance of the service) under section

1           8334(a) of such title 5, or such individual is  
2           receiving an annuity from the Civil Service  
3           Retirement and Disability Fund (for service  
4           as an employee);”.

5           (b) Except as otherwise provided in subsection (d), the  
6           amendments made by subsection (a) shall be effective with  
7           respect to service performed after December 31, 1983.

8           (c) For purposes of section 210(a)(5)(v) of the Social  
9           Security Act and section 3121(b)(5)(v) of the Internal Reve-  
10          nue Code of 1954, an individual shall not be considered to be  
11          subject to subchapter III of chapter 83 of title 5, United  
12          States Code, if he is contributing a reduced amount by reason  
13          of the Federal Employees’ Retirement Contribution Tempo-  
14          rary Adjustment Act of 1983.

15          (d)(1) Any individual who—

16                (A) was performing service in the employ of the  
17                United States (or an instrumentality thereof) and was  
18                subject to subchapter III of chapter 83 of title 5,  
19                United States Code, on December 31, 1983 (as deter-  
20                mined for purposes of section 210(a)(5)(v) of the Social  
21                Security Act), and

22                (B)(i) received a lump-sum payment under section  
23                8342(a) of such title 5 after December 31, 1983, and  
24                prior to the date of the enactment of this Act, or (ii)  
25                has otherwise ceased to be subject to subchapter III of

1 chapter 83 of such title (or did not have an application  
2 pending for coverage under such subchapter) after De-  
3 cember 31, 1983, and prior to the date of the enact-  
4 ment of this Act, for any service performed in the leg-  
5 islative branch,  
6 shall, if such individual again becomes subject to subchapter  
7 III of chapter 83 of title 5 (or applies for coverage under  
8 such subchapter) within 30 days after the date of the enact-  
9 ment of this Act, requalify for the exemption from social se-  
10 curity coverage and taxes under section 210(a)(5) of the  
11 Social Security Act and section 3121(b)(5) of the Internal  
12 Revenue Code of 1954 for service in the legislative branch of  
13 the Federal Government performed after again becoming  
14 subject to such subchapter, as if such cessation of coverage  
15 under title 5 had not occurred.

16 (2) An individual meeting the requirements of subpara-  
17 graphs (A) and (B) of paragraph (1) who is not in the employ  
18 of the United States or an instrumentality thereof on the date  
19 of the enactment of this Act may requalify for such exemp-  
20 tions in the same manner as under paragraph (1) if such indi-  
21 vidual again becomes subject to subchapter III of chapter 83  
22 of title 5 (or applies for coverage under such subchapter)  
23 within 30 days after the date on which he first returns to  
24 service in the legislative branch after such date of enactment,  
25 if such date (on which he returns to service) is within 365

1 days after he was last in the employ of the United States or  
2 an instrumentality thereof.

3 (3) If an individual meeting the requirements of subpara-  
4 graphs (A) and (B) of paragraph (1) does not again become  
5 subject to subchapter III of chapter 83 of title 5 (or apply for  
6 coverage under such subchapter) within the relevant 30-day  
7 period as provided in paragraph (1) or (2), social security cov-  
8 erage and taxes by reason of section 210(a)(5)(v) of the  
9 Social Security Act and section 3121(b)(5)(v) of the Internal  
10 Revenue Code of 1954 shall, with respect to such individ-  
11 ual's service in the legislative branch of the Federal Govern-  
12 ment, become effective with the first month beginning after  
13 such 30-day period.

14 (4) The provisions of paragraphs (1) and (2) shall apply  
15 only for purposes of reestablishing an exemption from social  
16 security coverage and taxes, and do not affect the amount of  
17 service to be credited to an individual for purposes of title 5,  
18 United States Code.

19 EMPLOYEES OF NONPROFIT ORGANIZATIONS  
20 WHO ARE REQUIRED TO PARTICIPATE IN  
21 THE CIVIL SERVICE RETIREMENT SYSTEM

22 SEC. 983. (a) For purposes of section 210(a)(5) of the  
23 Social Security Act (as in effect in January 1983 and as in  
24 effect on and after January 1, 1984) and section 3121(b)(5)  
25 of the Internal Revenue Code of 1954 (as so in effect), serv-



1 ice performed in the employ of a nonprofit organization de-  
2 scribed in section 501(c)(3) of the Internal Revenue Code of  
3 1954 by an employee who is required by law to be subject to  
4 subchapter III of chapter 83 of title 5, United States Code,  
5 with respect to such service, shall be considered to be service  
6 performed in the employ of an instrumentality of the United  
7 States.

8 (b) For purposes of section 203 of the Federal Employ-  
9 ees' Retirement Contribution Temporary Adjustment Act of  
10 1983, service described in subsection (a) which is also "em-  
11 ployment" for purposes of title II of the Social Security Act,  
12 shall be considered to be "covered service".

13 (c) The provisions of this section shall apply to service  
14 performed on and after January 1, 1984.

15 OTHER TECHNICAL CORRECTIONS TO TITLE II  
16 OF THE SOCIAL SECURITY ACT AND THE IN-  
17 TERNAL REVENUE CODE NECESSITATED BY  
18 THE SOCIAL SECURITY AMENDMENTS OF  
19 1983

20 SEC. 984. (a) Section 201(l)(3)(B)(i) of the Social Secu-  
21 rity Act is amended by inserting "Insurance" after "Survi-  
22 vors".

23 (b)(1) Section 202(c)(1) of such Act is amended (in the  
24 matter appearing between subparagraphs (D) and (E) of such  
25 section)—

1 (A) by striking out all that follows “has attained”  
2 and precedes “, the first month” in clause (i) and in-  
3 serting in lieu thereof “retirement age (as defined in  
4 section 216(l))”;

5 (B) by striking out all that follows “has not at-  
6 tained” and precedes “, or” in clause (ii)(I) and insert-  
7 ing in lieu thereof “retirement age (as defined in sec-  
8 tion 216(l))”; and

9 (C) by striking out “to which” in the matter fol-  
10 lowing clause (ii) and inserting in lieu thereof “in  
11 which”.

12 (2) Section 202(c)(5)(A) of such Act is amended by  
13 striking out “classes (i) and (ii)” and inserting in lieu thereof  
14 “clauses (i) and (ii)”.

15 (c)(1) Section 202(e)(2)(A) of such Act is amended by  
16 striking out “paragraph (8)” and inserting in lieu thereof  
17 “paragraph (7)”.

18 (2) Section 202(e)(2)(C) of such Act is amended—

19 (A) by striking out the period immediately after  
20 “deceased individual”; and

21 (B) by inserting a closing parenthesis after “para-  
22 graph (3) of such subsection (w)”.

23 (3) Section 202(e)(7) of such Act is amended by striking  
24 out “paragraph (2)(B)” and inserting in lieu thereof “para-  
25 graph (2)(D)”.

1       (d)(1) Section 202(f)(1)(C)(ii) of such Act is amended by  
2 striking out all that follows “attained” and precedes “, and”  
3 and inserting in lieu thereof “retirement age (as defined in  
4 section 216(l))”.

5       (2) Section 202(f)(2)(A) of such Act is amended by strik-  
6 ing out “paragraph (3)(B)” and inserting in lieu thereof  
7 “paragraph (3)(D)”.

8       (3) Section 202(f)(3)(C) of such Act is amended by strik-  
9 ing out the period immediately after “deceased individual”.

10       (e) Section 202(q)(9)(B)(i) of such Act is amended by  
11 striking out “section 216(a)” and inserting in lieu thereof  
12 “section 216(l)”.

13       (f) Section 202(x) of such Act is amended by adding at  
14 the beginning thereof the following heading:

15               “Limitation on Payments to Prisoners”.

16       (g)(1) Section 203(d) of such Act is amended—

17               (A) by striking out “on seven or more different  
18 calendar days of which he engaged” in paragraph  
19 (1)(A) and inserting in lieu thereof “for more than  
20 forty-five hours of which such individual engaged”; and

21               (B) by striking out “on seven or more different  
22 calendar days” in paragraph (2) and inserting in lieu  
23 thereof “for more than forty-five hours”.

1       (2) The amendments made by paragraph (1) shall apply  
2 only with respect to months beginning with the second month  
3 after the month in which this Act is enacted.

4       (3) Paragraphs (3) and (8)(D) of section 203(f) of such  
5 Act are each amended by striking out “who has attained re-  
6 tirement age” and inserting in lieu thereof in each instance  
7 “who has attained the retirement age applicable for old-age  
8 insurance benefits”.

9       (h) Section 205(r) of such Act is amended—

10           (1) by striking out “(r)(3)(A) and (r)(3)(B)” in  
11 paragraph (4) and inserting in lieu thereof “subpara-  
12 graphs (A) and (B) of paragraph (3)”;

13           (2) by striking out “the Act” in paragraph (7) and  
14 inserting in lieu thereof “this Act”; and

15           (3) by striking out the heading and inserting in  
16 lieu thereof the following:

17           “Use of Death Certificates to Correct Program  
18 Information”.

19       (i) Section 209(e) of such Act is amended by striking out  
20 the semicolon after “Act of 1974”.

21       (j)(1) Section 215(a)(7)(B)(ii)(I) of the Social Security  
22 Act is amended by striking out “who initially become eligible  
23 for old-age or disability insurance benefits” and inserting in  
24 lieu thereof “who become eligible (as defined in paragraph  
25 (3)(B)) for old-age insurance benefits (or became eligible as so

1 defined for disability insurance benefits before attaining age  
2 62”.

3 (2) Section 215(a)(7)(C)(ii) of such Act is amended by  
4 striking out “survivors” and inserting in lieu thereof “survi-  
5 vor’s”.

6 (3) Section 215(f)(9)(B)(i) of such Act is amended by  
7 striking out “as though such primary insurance amount had  
8 initially been computed without regard to subsection (a)(7) or  
9 (d)(5)” and inserting in lieu thereof “as though the recomput-  
10 ed primary insurance amount were being computed under  
11 subsection (a)(7) or (d)(5)”.

12 (4) Section 215(i)(5)(A) of such Act is amended by  
13 adding at the end thereof the following new sentence: “Any  
14 amount so increased that is not a multiple of \$0.10 shall be  
15 decreased to the next lower multiple of \$0.10.”.

16 (5) Section 215(i)(5)(B) of such Act is amended—

17 (A) by striking out clause (iii) and inserting in lieu  
18 thereof the following:

19 “(iii) multiplying such quotient by 100 so as to  
20 yield such applicable additional percentage (which shall  
21 be rounded to the nearest one-tenth of 1 percent),”;

22 (B) by striking out “ending with such subsequent  
23 calendar year” in clauses (iv) and (v) and inserting in  
24 lieu thereof “ending with the year before such subse-  
25 quent calendar year”; and



1           (C) by striking out “initially became eligible for  
2           an old-age or disability insurance benefit” in clause (v)  
3           and inserting in lieu thereof “became eligible (as de-  
4           fined in subsection (a)(3)(B)) for the old-age or disabil-  
5           ity insurance benefit that is being increased under this  
6           subsection”.

7           (k)(1) Section 216(f) of such Act is amended by adding  
8           at the end thereof the following new sentence: “For purposes  
9           of subparagraph (C) of section 202(c)(1), a divorced husband  
10          shall be deemed not to be married throughout the month in  
11          which he becomes divorced.”.

12          (2) Section 216(h)(3)(A)(i) of such Act is amended by  
13          striking out “(as defined in section 216(l))” and inserting in  
14          lieu thereof “(as defined in subsection (l))”.

15          (3) Section 216(i)(2) of such Act is amended by striking  
16          out “(as defined in section 216(l))” in subparagraphs (B) and  
17          (D) and inserting in lieu thereof “(as defined in subsection  
18          (l))”.

19          (l) Subparagraph (B) of section 223(c)(1) of such Act is  
20          amended by moving clause (iii) two ems to the left, and by  
21          moving the preceding provisions of such subparagraph two  
22          ems to the right, so that the left margin of such subparagraph  
23          and its clauses is indented four ems and is aligned with the  
24          margin of subparagraph (A) of such section.

1 (m) Section 229(b) of such Act is amended by adding at  
2 the end thereof the following new sentence: "Additional ad-  
3 justments may be made in the amounts so authorized to be  
4 appropriated to the extent that the amounts transferred in  
5 accordance with clauses (i) and (ii) of section 151(b)(3)(B) of  
6 the Social Security Amendments of 1983 with respect to  
7 wages deemed to have been paid in 1983 were in excess of or  
8 were less than the amount which the Secretary, on the basis  
9 of appropriate data, determines should have been so  
10 transferred."

11 TECHNICAL CORRECTIONS TO THE SOCIAL  
12 SECURITY AMENDMENTS OF 1983

13 SEC. 985. (a) Section 101(d) of the Social Security  
14 Amendments of 1983 (Public Law 98-21) is amended by  
15 striking out "remuneration paid" and inserting in lieu thereof  
16 "service performed".

17 (b) Section 112(f) of such Amendments is amended by  
18 inserting "of such Act" after "section 201(a)".

19 (c) Section 201(c) of such Amendments is amended—

20 (1) by inserting "the" immediately before "age of  
21 65" in paragraph (1); and

22 (2) by inserting "the" immediately before "age of  
23 sixty-five" in paragraph (3).

24 (d) Section 301(a)(5) of such Amendments is amended  
25 by striking out "Section 202(c)" and inserting in lieu thereof

1 “Effective with respect to monthly insurance benefits for  
2 months after December 1984 (but only on the basis of appli-  
3 cations filed on or after January 1, 1985), section 202(c)”.

4 (e) Section 305(d)(2) of such Amendments is amended  
5 by inserting “each place it appears” immediately before “in  
6 subsection (c)(4)(C)”.

7 (f) Section 339(b) of such amendments is amended to  
8 read as follows:

9 “(b) Section 223 of such Act is amended by adding at  
10 the end thereof the following new subsection:

11 “ ‘(h) For provisions relating to limitation on payments  
12 to prisoners, see section 202(x).’ ”.

13 (g) Section 111(e) of such Amendments is amended by  
14 inserting “Budget” before “Reconciliation”.

15 SUBTITLE D—IMPLEMENTATION OF GRACE COMMISSION

16 RECOMMENDATIONS

17 INCOME AND ELIGIBILITY VERIFICATION

18 PROCEDURES

19 SEC. 991. Part A of title XI of the Social Security Act  
20 is amended by adding at the end thereof the following new  
21 section:

3           “SEC. 1136. (a) In order to meet the requirements of  
4   this section, a State must have in effect an income and eligi-  
5   bility verification system under which—

6           “(1) the State shall require, as a condition of eli-  
7       gibility for benefits under any program listed in subsec-  
8       tion (b), that each applicant for or recipient of benefits  
9       under that program furnish to the State his social secu-  
10      rity account number (or numbers, if he has more than  
11      one such number), and the State shall utilize such ac-  
12      count numbers in the administration of that program so  
13      as to enable the association of the records pertaining to  
14      the applicant or recipient with his account number;

“(2) wage information from agencies administering State unemployment compensation laws available pursuant to section 3304(a)(16) of the Internal Revenue Code of 1954, wage information reported pursuant to paragraph (3) of this subsection, and wage, income and other information from the Social Security Administration and the Internal Revenue Service available pursuant to section 6103(l)(7) of such Code, shall be requested and utilized to the extent that such information may be useful in verifying eligibility for, and the amount of, benefits available under any program listed

1 in subsection (b), as determined by the Secretary of  
2 Health and Human Services (or, in the case of the un-  
3 employment compensation program, by the Secretary  
4 of Labor);

5 “(3) employers in such State are required to make  
6 quarterly wage reports to a State agency (which may  
7 be the agency administering the State’s unemployment  
8 compensation law) except that the Secretary of Labor  
9 (in consultation with the Secretary of Health and  
10 Human Services) may waive the provisions of this  
11 • paragraph if he determines that the State has in effect  
12 an alternative system which is as effective and timely  
13 for purposes of providing employment related income  
14 and eligibility data for the purposes described in para-  
15 graph (2);

16 “(4) the State agencies administering the pro-  
17 grams listed in subsection (b) adhere to standardized  
18 formats and procedures established by the Secretary of  
19 Health and Human Services under which—

20 “(A) the agencies will exchange with each  
21 other information in their possession which may  
22 be of use in establishing or verifying eligibility or  
23 benefit amounts under any other such program;

24 “(B) such information shall be made availa-  
25 ble to assist in the child support program under



1       part D of title IV of this Act, and to assist the  
2       Secretary of Health and Human Services in es-  
3       tablishing or verifying eligibility or benefit  
4       amounts under titles II and XVI of this Act, but  
5       subject to the safeguards and restrictions estab-  
6       lished by the Secretary of the Treasury with re-  
7       spect to information released pursuant to section  
8       6103 (l) of the Internal Revenue Code of 1954;  
9       and

10           “(C) the use of such information shall be tar-  
11       geted to those uses which are most likely to be  
12       productive in identifying and preventing ineligibil-  
13       ity and incorrect payments;

14           “(5) adequate safeguards are in effect so as to  
15       assure that—

16           “(A) the information exchanged by the State  
17       agencies is made available only to the extent nec-  
18       essary to assist in the valid administrative needs  
19       of the program receiving such information, and  
20       the information released pursuant to section 6103  
21       (l) of the Internal Revenue Code is only ex-  
22       changed with agencies authorized to receive such  
23       information under such section 6103 (l); and

24           “(B) the information is adequately protected  
25       against unauthorized disclosure for other purposes,

1 as provided in regulations established by the Sec-  
2 retary of Health and Human Services, or, in the  
3 case of the unemployment compensation program,  
4 the Secretary of Labor, or in the case of informa-  
5 tion released pursuant to section 6103 (l) of the  
6 Internal Revenue Code of 1954, the Secretary of  
7 the Treasury; and

8 “(6) accounting systems are utilized which assure  
9 that programs providing data receive appropriate reim-  
10 bursement from the programs utilizing the data for the  
11 costs incurred in providing the data.

12 “(b) The programs which must participate in the income  
13 verification system are—

14 “(1) the aid to families with dependent children  
15 program under part A of title IV of this Act;

16 “(2) the medicaid program under title XIX of this  
17 Act;

18 “(3) the unemployment compensation program  
19 under section 3304 of the Internal Revenue Code of  
20 1954; and

21 “(4) any State program under a plan approved  
22 under title I, X, XIV, or XVI of this Act.”.

23 (b)(1) Section 402(a)(25) of the Social Security Act is  
24 amended to read as follows:

1           “(25) provide that information is requested and  
2       exchanged for purposes of income and eligibility verifi-  
3       cation in accordance with a State system which meets  
4       the requirements of section 1136 of this Act;”.

5       (2) Section 402(a)(29) of such Act is repealed.

6       (3) Section 411 of such Act is repealed.

7       (c) Section 1902(a) of the Social Security Act is  
8       amended—

9           (1) by striking out “and” at the end of paragraph  
10       (43);

11          (2) by striking out the period at the end of para-  
12       graph (44) and inserting in lieu thereof “; and”; and

13          (3) by inserting after paragraph (44) the following  
14       new paragraph:

15           “(45) provide that information is requested and  
16       exchanged for purposes of income and eligibility verifi-  
17       cation in accordance with a State system which meets  
18       the requirements of section 1136 of this Act.”.

19       (d) Section 303 of the Social Security Act is amended  
20       by adding at the end thereof the following new subsection:

21           “(f) The State agency charged with the administration  
22       of the State law shall provide that information shall be re-  
23       quested and exchanged for purposes of income and eligibility  
24       verification in accordance with a State system which meets  
25       the requirements of section 1136 of this Act.”.

1 (e) Section 2 (a) of the Social Security Act is amend-  
2 ed—

3 (1) by striking out the period at the end of para-  
4 graph (10) and inserting in lieu thereof “; and”; and

5 (2) by adding at the end thereof the following new  
6 paragraph:

7 “(11) provide that information is requested and  
8 exchanged for purposes of income and eligibility verifi-  
9 cation in accordance with a State system which meets  
10 the requirements of section 1136 of this Act.”.

11 (f) Section 1002 (a) of the Social Security Act is amend-  
12 ed—

13 (1) by striking out “and” at the end of clause  
14 (12); and

15 (2) by inserting before the period at the end there-  
16 of the following: “; and (14) provide that information is  
17 requested and exchanged for purposes of income and  
18 eligibility verification in accordance with a State  
19 system which meets the requirements of section 1136  
20 of this Act”.

21 (g) Section 1402 (a) of the Social Security Act is  
22 amended—

23 (1) by striking out “and” at the end of clause  
24 (11); and

1           (2) by inserting before the period at the end there-  
2 of the following: “; and (13) provide that information is  
3 requested and exchanged for purposes of income and  
4 eligibility verification in accordance with a State  
5 system which meets the requirements of section 1136  
6 of this Act”.

7           (h) Section 1602 (a) of the Social Security Act (as in  
8 effect with respect to Puerto Rico, Guam, and the Virgin  
9 Islands) is amended—

10       •           (1) by striking out “and” at the end of paragraph  
11 (13);

12           (2) by striking out the period at the end of para-  
13 graph (14) and inserting in lieu thereof “; and”; and

14           (3) by inserting after paragraph (14) the following  
15 new paragraph:

16           “(15) provide that information is requested and  
17 exchanged for purposes of income and eligibility verifi-  
18 cation in accordance with a State system which meets  
19 the requirements of section 1136 of this Act.”.

20           (i) Section 1631(e)(1)(B) of the Social Security Act is  
21 amended by adding at the end thereof the following: “For  
22 this purpose, the Secretary shall, as may be necessary, re-  
23 quest and utilize information available pursuant to section  
24 6103(l)(7) of the Internal Revenue Code of 1954, and any



1 information which may be available from State systems under  
2 section 1136 of this Act.”.

3 (j)(1) Section 6103 (l) (7) of the Internal Revenue Code  
4 of 1954 is amended to read as follows:

5 “(7) Disclosure of return information to Federal,  
6 State, and local agencies administering certain pro-  
7 grams under the Social Security Act or the Food  
8 Stamp Act of 1977.—

9 “(A) RETURN INFORMATION FROM SOCIAL  
10 SECURITY ADMINISTRATION.—The Commission-  
11 er of Social Security shall, upon written request,  
12 disclose return information from returns with re-  
13 spect to net earnings from self-employment (as de-  
14 fined in section 1402), wages (as defined in sec-  
15 tion 3121(a) or 3401(a)), and payments of retire-  
16 ment income, which have been disclosed to the  
17 Social Security Administration as provided by  
18 paragraph (1) or (5) of this subsection, to any  
19 Federal, State, or local agency administering a  
20 program listed in subparagraph (D).

21 “(B) RETURN INFORMATION FROM INTER-  
22 NAL REVENUE SERVICE.—The Secretary shall,  
23 upon written request, disclose return information  
24 from returns with respect to unearned income  
25 from the Internal Revenue Service files to any

1 Federal, State, or local agency administering a  
2 program listed in subparagraph (D).

3 “(C) RESTRICTION ON DISCLOSURE.—The  
4 Commissioner of Social Security and the Secre-  
5 tary shall disclose return information under sub-  
6 paragraphs (A) and (B) only for purposes of, and  
7 to the extent necessary in, determining eligibility  
8 for, or the correct amount of, benefits under a  
9 program listed in subparagraph (D).

10 “(D) PROGRAMS TO WHICH RULE AP-  
11 PLIES.—The programs to which this paragraph  
12 applies are:

13 “(i) aid to families with dependent chil-  
14 dren provided under a State plan approved  
15 under part A of title IV of the Social Secu-  
16 rity Act;

17 “(ii) medical assistance provided under a  
18 State plan approved under title XIX of the  
19 Social Security Act;

20 “(iii) supplemental security income  
21 benefits provided under title XVI of the  
22 Social Security Act;

23 “(iv) any benefits provided under a  
24 State plan approved under title I, X, XIV,  
25 or XVI of the Social Security Act (as those

1 titles apply to Puerto Rico, Guam, and the  
2 Virgin Islands);

3 “(v) unemployment compensation pro-  
4 vided under a State law described in section  
5 3304 of this Code; and

6 “(vi) assistance provided under the Food  
7 Stamp Act of 1977.”.

8 (2) Section 6103(a)(2) of such Code is amended by strik-  
9 ing out “or of any local child support enforcement agency”  
10 and inserting in lieu thereof “, any local child support en-  
11 forcement agency, or any local agency administering a pro-  
12 gram listed in subsection (l)(7)(D)”.

13 (k)(1) The amendments made by subsections (i) and (j)  
14 shall become effective on the date of the enactment of this  
15 Act.

16 (2) The amendments made by subsections (a) through (h)  
17 shall become effective on April 1, 1985. In the case of any  
18 State which submits a plan describing a good faith effort by  
19 such State to come into compliance with the requirements of  
20 such subsections, the Secretary of Health and Human Serv-  
21 ices (or, in the case of the State unemployment compensation  
22 program or the wage reporting requirements, the Secretary  
23 of Labor) may by waiver grant a delay in the effective date of  
24 such subsections, but such waiver may not delay the effective  
25 date beyond September 30, 1986.

1     COLLECTION AND DEPOSIT OF PAYMENTS TO  
2                     EXECUTIVE AGENCIES

3             SEC. 992. (a)(1) Subchapter II of chapter 37 of title 31,  
4     United States Code, is amended by adding at the end thereof  
5     the following new section:

6     “§ 3720. Collection of payments

7             “(a) Each head of an executive agency shall, under such  
8     regulations as the Secretary of the Treasury shall prescribe,  
9     provide for the timely deposit of money by officials and  
10    agents of such agency in accordance with section 3302, and  
11    for the collection and timely deposit of sums owed to such  
12    agency by the use of such procedures as withdrawals and  
13    deposits by electronic transfer of funds, automatic withdraw-  
14    als from accounts at financial institutions, and a system under  
15    which financial institutions receive and deposit, on behalf of  
16    the executive agency, payments transmitted to post office  
17    lockboxes. The Secretary is authorized to collect from any  
18    agency not complying with the requirements imposed pursu-  
19    ant to the preceding sentence a charge in an amount the  
20    Secretary determines to be the cost to the general fund  
21    caused by such noncompliance.

22             “(b) The head of an executive agency shall pay to the  
23    Secretary of the Treasury charges imposed pursuant to sub-  
24    section (a). Payments shall be made out of amounts appropri-  
25    ated or otherwise made available to carry out the program to

1 which the collections relate. The amounts of the charges paid  
2 under this subsection shall be deposited in the Cash Manage-  
3 ment Improvements Fund established by subsection (c).

4 “(c) There is established in the Treasury of the United  
5 States a revolving fund to be known as the ‘Cash Manage-  
6 ment Improvements Fund’. Sums in the fund shall be availa-  
7 ble without fiscal year limitation for the payment of expenses  
8 incurred in developing the methods of collection and deposit  
9 described in subsection (a) of this section and the expenses  
10 incurred in carrying out collections and deposits using such  
11 methods, including the costs of personal services and the  
12 costs of the lease or purchase of equipment and operating  
13 facilities.”.

14 (2) The analysis of subchapter II of chapter 37 of title  
15 31, United States Code, is amended by adding at the end  
16 thereof the following new item:

“3720. Collection of payments.”.

17 (3) The Secretary of the Treasury shall prescribe regu-  
18 lations, including regulations under section 3720 of title 31,  
19 United States Code, designed to achieve by October 1, 1986,  
20 full implementation of the purposes of this subsection.

21 (b)(1) Subsection (c) of section 3302 of title 31, United  
22 States Code, is amended—

23 (A) by inserting “(1)” after the subsection desig-  
24 nation;



1 (B) by striking out “, but not later than the 30th  
2 day after the custodian receives the money,”;

3 (C) by inserting after the first sentence the follow-  
4 ing new sentence: “Except as provided in paragraph  
5 (2), money required to be deposited pursuant to this  
6 subsection shall be deposited not later than the third  
7 day after the custodian receives the money.”; and

8 (D) by adding at the end thereof the following  
9 new paragraph:

10 “(2) The Secretary of the Treasury may by regulation  
11 prescribe that a person having custody or possession of  
12 money required by this subsection to be deposited shall de-  
13 posit such money during a period of time that is greater or  
14 lesser than the period of time specified by the second sen-  
15 tence of paragraph (1).”.

16 (2) The amendments made by this subsection shall  
17 become effective January 1, 1985.

18 COLLECTION OF NON-TAX DEBTS OWED TO  
19 FEDERAL AGENCIES

20 SEC. 993. (a)(1) Subchapter II of chapter 37 of title 31,  
21 United States Code, is amended by adding at the end thereof  
22 the following new section:

23 “§ 3721. Reduction of tax refund by amount of debt

24 “(a) Any Federal agency that is owed a past-due legally  
25 enforceable debt (other than any OASDI overpayment and

1 past-due support) by a named person shall, in accordance  
2 with regulations issued pursuant to subsection (d), notify the  
3 Secretary of the Treasury of the amount of such debt.

4 “(b) No Federal agency may take action pursuant to  
5 subsection (a) with respect to any debt until such agency—

6 “(1) notifies the person incurring such debt that  
7 such agency proposes to take action pursuant to such  
8 paragraph with respect to such debt;

9 “(2) gives such person at least 60 days to present  
10 evidence that all or part of such debt is not past-due or  
11 not legally enforceable;

12 “(3) considers any evidence presented by such  
13 person and determines that an amount of such debt is  
14 past due and legally enforceable; and

15 “(4) satisfies such other conditions as the Secre-  
16 tary may prescribe to ensure that the determination  
17 made under paragraph (3) with respect to such debt is  
18 valid and that the agency has made reasonable efforts  
19 to obtain payment of such debt.

20 “(c) Upon receiving notice from any Federal agency  
21 that a named person owes to such agency a past-due legally  
22 enforceable debt, the Secretary of the Treasury shall deter-  
23 mine whether any amounts, as refunds of Federal taxes paid,  
24 are payable to such person. If the Secretary of the Treasury  
25 finds that any such amount is payable, he shall reduce such

1 refunds by an amount equal to the amount of such debt, pay  
2 the amount of such reduction to such agency, and notify such  
3 agency of the individual's home address.

4       “(d) The Secretary of the Treasury shall issue regula-  
5 tions prescribing the time or times at which agencies must  
6 submit notices of past-due legally enforceable debts, the  
7 manner in which such notices must be submitted, and the  
8 necessary information that must be contained in or accompa-  
9 ny the notices. The regulations shall specify the minimum  
10 amount of debt to which the reduction procedure established  
11 by subsection (c) may be applied and the fee that an agency  
12 must pay to reimburse the Secretary of the Treasury for the  
13 full cost of applying such procedure. Any fee paid to the Sec-  
14 retary pursuant to the preceding sentence may be used to  
15 reimburse appropriations which bore all or part of the cost of  
16 applying such procedure.

17       “(e) Any Federal agency receiving notice from the Sec-  
18 retary of the Treasury that an erroneous payment has been  
19 made to such agency under subsection (c) shall pay promptly  
20 to the Secretary, in accordance with such regulations as the  
21 Secretary may prescribe, an amount equal to the amount of  
22 such erroneous payment (without regard to whether any  
23 other amounts payable to such agency under such subsection  
24 have been paid to such agency).

25       “(f) For purposes of this section—

1           “(1) the term “Federal agency” means a depart-  
 2           ment, agency, or instrumentality of the United States  
 3           and includes a Government corporation (as such term  
 4           is defined in section 103 of title 5, United States  
 5           Code);

6           “(2) the term “past-due support” means any de-  
 7           linquency subject to section 464 of the Social Security  
 8           Act; and

9           “(3) the term “OASDI overpayment” means any  
 10          overpayment of benefits made to an individual under  
 11          title II of the Social Security Act.”.

12          (2) The analysis of subchapter II of chapter 37 of title  
 13          31, United States Code, is amended by adding at the end  
 14          thereof the following new item:

“3721. Reduction of tax refund by amount of debt.”.

15          (b)(1) Section 6402 of the Internal Revenue Code of  
 16          1954 (relating to authority to make credits or refunds) is  
 17          amended by adding at the end thereof the following new sub-  
 18          sections:

19          “(d) COLLECTION OF DEBTS OWED TO FEDERAL  
 20          AGENCIES.—

21          “(1) IN GENERAL.—Upon receiving notice from  
 22          any Federal agency that a named person owes a past-  
 23          due legally enforceable debt (other than any OASDI  
 24          overpayment and past-due support subject to the provi-

1       sions of subsection (c)) to such agency, the Secretary  
2       shall—

3               “(A) reduce the amount of any overpayment  
4       payable to such person by the amount of such  
5       debt;

6               “(B) pay the amount by which such overpay-  
7       ment is reduced under subparagraph (A) to such  
8       agency; and

9               “(C) notify the person making such overpay-  
10      ment that such overpayment has been reduced by  
11      an amount necessary to satisfy such debt.

12              “(2) PRIORITIES FOR OFFSET.—Any overpay-  
13      ment by a person shall be reduced pursuant to this  
14      subsection after such overpayment is reduced pursuant  
15      to subsection (c) with respect to past-due support col-  
16      lected pursuant to an assignment under section  
17      402(a)(26) of the Social Security Act and before such  
18      overpayment is credited to the future liability for tax of  
19      such person pursuant to subsection (b). If the Secretary  
20      receives notice from a Federal agency or agencies of  
21      more than one debt subject to paragraph (1) that is  
22      owed by a person to such agency or agencies, any  
23      overpayment by such person shall be applied against  
24      such debts in the order in which such debts accrued.



1           “(3) DEFINITIONS.—For purposes of this subsec-  
2           tion the term ‘OASDI overpayment’ means any over-  
3           payment of benefits made to an individual under title  
4           II of the Social Security Act.

5           “(e) REVIEW OF REDUCTIONS.—No court of the United  
6 States shall have jurisdiction to hear any action, whether  
7 legal or equitable, brought to restrain or review a reduction  
8 authorized by subsection (c) or (d). No such reduction shall be  
9 subject to review by the Secretary in an administrative pro-  
10 ceeding. No action brought against the United States to re-  
11 cover the amount of any such reduction shall be considered to  
12 be a suit for refund of tax. This subsection does not preclude  
13 any legal, equitable, or administrative action against the Fed-  
14 eral agency to which the amount of such reduction was paid.

15           “(f) FEDERAL AGENCY.—For purposes of this section,  
16 the term ‘Federal agency’ means a department, agency, or  
17 instrumentality of the United States, and includes a Govern-  
18 ment corporation (as such term is defined in section 103 of  
19 title 5, United States Code).

20           “(g) CROSS REFERENCE.—For procedures relating to  
21 agency notification of the Secretary, see section 3721 of title  
22 31, United States Code.”.

23           (2) Subsection (a) of section 6402 of such Code is  
24 amended by striking out “subsection (c)” and inserting in lieu  
25 thereof “subsections (c) and (d)”.

1       (3)(A) Subsection (l) of section 6103 of such Code (relat-  
2 ing to confidentiality and disclosure of returns and informa-  
3 tion) is amended by adding at the end thereof the following  
4 new paragraph:

5           “(9) DISCLOSURE OF CERTAIN INFORMATION TO  
6 AGENCIES REQUESTING A REDUCTION UNDER SEC-  
7 TION 6402(c) OR 6402(d).—

8           “(A) RETURN INFORMATION FROM INTER-  
9 NAL REVENUE SERVICE.—The Secretary may,  
10 upon receiving a written request, disclose to offi-  
11 cers and employees of an agency seeking a reduc-  
12 tion under section 6402(c) or 6402(d)—

13           “(i) the fact that a reduction has been  
14 made or has not been made under such sub-  
15 section with respect to any person;

16           “(ii) the amount of such reduction; and

17           “(iii) taxpayer identifying information of  
18 the person against whom a reduction was  
19 made or not made.

20           “(B) RESTRICTION ON USE OF DISCLOSED  
21 INFORMATION.—Any officers and employees of  
22 an agency receiving return information under sub-  
23 paragraph (A) shall use such information only for  
24 the purposes of, and to the extent necessary in,  
25 establishing appropriate agency records or in the

1 defense of any litigation or administrative proce-  
2 dure ensuing from reduction made under section  
3 6402(c) or section 6402(d).”.

4 (B)(i) Section 6103(p)(3)(A) of such Code (relating to  
5 procedure and recordkeeping) is amended by striking out  
6 “(l)(1), (4)(B), (5), (7), or (8)” and inserting in lieu thereof  
7 “(l)(1), (4)(B), (5), (7), (8), or (9)”.

8 (ii) Section 6103(p)(4) of such Code is amended by strik-  
9 ing out “(l)(1), (2), or (5)” and inserting in lieu thereof “(l)(1),  
10 (2), (5), or (9)”.

11 (iii) Section 6103(p)(4)(F)(ii) of such Code is amended  
12 by striking out “(l)(1), (2), (3), or (5)” and inserting in lieu  
13 thereof “(l)(1), (2), (3), (5), or (9)”.

14 (4) Section 7213(a)(2) of such Code (relating to unau-  
15 thorized disclosure of information) is amended by striking out  
16 “(l)(6), (7), or (8)” and inserting in lieu thereof “(l)(6), (7),  
17 (8), or (9)”.

18 (c) The amendments made by this section shall apply  
19 with respect to refunds payable under section 6402 of the  
20 Internal Revenue Code of 1954 after December 31, 1985,  
21 and before January 1, 1988.



DEFICIT REDUCTION ACT  
OF 1984

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THE COMMITTEE OF CONFERENCE

SUBMITTED THE FOLLOWING

CONFERENCE REPORT

[To accompany H.R. 4170]



JUNE 23, 1984.—Ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1984



## DEFICIT REDUCTION ACT OF 1984

JUNE 23, 1984.—Ordered to be printed

Mr. ROSTENKOWSKI, from the committee of conference,  
submitted the following

### CONFERENCE REPORT

[To accompany H.R. 4170]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the amendments of the Senate to the bill (H.R. 4170) to provide for tax reform, and for other purposes, having met, after full and free conference, having agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### **SECTION 1. SHORT TITLE.**

(a) **SHORT TITLE.**—*This Act may be cited as the “Deficit Reduction Act of 1984”.*

(b) **ACT DIVIDED INTO 2 DIVISIONS.**—*This Act consists of 2 divisions as follows:*

(1) **DIVISION A.**—*Tax Reform Act of 1984.*

(2) **DIVISION B.**—*Spending Reduction Act of 1984.*

### **DIVISION A—TAX REFORM ACT OF 1984**

#### **SEC. 5. SHORT TITLE, ETC.**

(a) **SHORT TITLE.**—*This division may be cited as the “Tax Reform Act of 1984”.*

(b) **AMENDMENT OF 1984 CODE.**—*Except as otherwise expressly provided, whenever in this division an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other*

(4) increasing economic incentives for capital formation and productivity,

(5) removing economic disincentives to employment,

(6) excluding certain items, such as social security benefits, from gross income,

(7) equalizing the tax burden on taxpayers with equal ability to pay taxes, and

(8) achieving the appropriate burden of taxes for each income class of taxpayers.

Such study shall also identify the strengths and potential weaknesses of an alternative tax system and propose possible solutions for any such potential weakness.

(c) **ALTERNATIVE TAX SYSTEM.**—For purposes of this section, the term “alternative tax system” means a system based on—

(1) a simplified income tax based on gross income;

(2) a consumption tax;

(3) a consumption-based tax; or

(4) the broadening of the base and lowering of the rates of the current income tax.

(d) **STUDY OF TAX SHELTERS TO BE INCLUDED.**—The study conducted under subsection (a) shall include a study of the entire area of tax shelters and how they impact on the equity of the tax system.

(e) **REPORTING DATE.**—The report of the study required by subsection (a) shall be submitted to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than December 31, 1984.

#### **SEC. 1082. STUDY OF TAXATION BY FOREIGN COUNTRIES ON SERVICES PERFORMED IN THE UNITED STATES.**

(a) **STUDY.**—The Secretary of the Treasury or his delegate shall conduct a study of the practices of foreign countries of taxing income on services performed within the United States, including, but not limited to—

(1) the status of treaty negotiations with such foreign countries with respect to such practices, and

(2) any options to alleviate the taxation of such income by more than 1 country without appropriate credit for taxes paid.

(b) **REPORT.**—The Secretary of the Treasury or his delegate shall report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives the results of the study conducted under subsection (a) no later than December 31, 1984.

### **DIVISION B—SPENDING REDUCTION ACT OF 1984**

**SEC. 2001.** This division may be cited as the “Spending Reduction Act of 1984”.

#### **TABLE OF CONTENTS**

Title I. General provisions.

Title II. Civil Service and military retirement programs.

Title III. Medicare, medicaid, and maternal and child health amendments.

Title IV. Small business programs.

Title V. Veterans' programs.

Title VI. OASDI, SSI, AFDC, and other programs.

Title VII. Competition in contracting.

Title VIII. Federal Credit Union Act Amendments.

Title IX. Miscellaneous provisions.

shall be increased by an amount, rounded to the nearest multiple of \$100 (or if midway between multiples of \$100, to the next higher multiple of \$100), equal to the overall percentage of the adjustment taking effect under section 5305 of title 5, United States Code, in the rates of pay under the General Schedule during fiscal year 1984.

#### RETIREMENT BENEFITS FOR NATIVES OF THE PRIBILOF ISLANDS

SEC. 2208. (a) Section 8332(b) of title 5, United States Code, is amended by striking out the period at the end of the second paragraph (13) and inserting in lieu thereof the following: “; and regardless of whether the Native who performs the service retires before, on, or after the effective date of this paragraph.”.

(b) Title II of Public Law 89-702, as amended by section 2 of Public Law 98-129, is amended by adding at the end thereof the following new section:

“SEC. 212. (a)(1) An annuity or survivor annuity based on the service of an employee or Member who performed service described in the second paragraph (13) of subsection (b) or subsection (1)(1)(C) of section 8332 of title 5, United States Code, as added by subsections (b) and (e), respectively, of section 209 of this Act, shall, upon application to the Office of Personnel Management, be recomputed in accordance with the second paragraph (13) of subsection (b) and subsection (1), respectively, of such section 8332, regardless of whether the employee or Member retires before, on, or after the effective date of this paragraph.

“(2) Any recomputation of annuity under paragraph (1) of this subsection shall apply with respect to months beginning more than 30 days after the date on which application for such recomputation is received by the Office.”.

(c) The amendments made by this section shall take effect as of October 14, 1983.

#### AMENDMENT TO OMNIBUS BUDGET RECONCILIATION ACT OF 1981

SEC. 2209. Section 1722 of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35; 95 Stat. 759) is amended by striking out “1984” and inserting in lieu thereof “1987”.

### TITLE III—MEDICARE, MEDICAID, AND MATERNAL AND CHILD HEALTH AMENDMENTS

#### SHORT TITLE OF TITLE

SEC. 2300. This title may be cited as the “Medicare and Medicaid Budget Reconciliation Amendments of 1984”.



## TABLE OF CONTENTS OF TITLE

## Subtitle A—Medicare Amendments

## PART I—REIMBURSEMENT AND BENEFIT CHANGES

- Sec. 2301. Modification of working aged provision.*
- Sec. 2302. Part B premium.*
- Sec. 2303. Payment for clinical diagnostic laboratory tests.*
- Sec. 2304. Pacemaker reimbursement review and reform.*
- Sec. 2305. Elimination of special payment provisions for preadmission diagnostic testing.*
- Sec. 2306. Limitation on physician fee prevailing and customary charge levels; participating physician incentives.*
- Sec. 2307. Payment for services of teaching physicians.*
- Sec. 2308. Lesser of cost or charges.*
- Sec. 2309. Study of medicare part B payments.*
- Sec. 2310. Limitation on increase in hospital costs per case.*
- Sec. 2311. Classification of certain rural hospitals.*
- Sec. 2312. Payment for services of a nurse anesthetist.*
- Sec. 2313. Prospective payment assessment commission.*
- Sec. 2314. Revaluation of assets.*
- Sec. 2315. Technical amendments relating to the DRG payment system.*
- Sec. 2316. Prospective payment wage index.*
- Sec. 2317. Deadline for report on including payment for physicians' services to hospital inpatients in DRG payment amounts.*
- Sec. 2318. Emergency room services.*
- Sec. 2319. Skilled nursing facility reimbursement.*
- Sec. 2320. Payment for costs of hospital-based mobile intensive care units.*
- Sec. 2321. Cost sharing for durable medical equipment furnished as a home health benefit.*
- Sec. 2322. Services of a clinical psychologist provided to members of an HMO.*
- Sec. 2323. Coverage of administration of hepatitis B vaccine.*
- Sec. 2324. Coverage of hemophilia clotting factor.*
- Sec. 2325. Payment for debridement of mycotic toenails.*
- Sec. 2326. Contracts for medicare claims processing.*

## PART II—ADMINISTRATIVE AND MISCELLANEOUS CHANGES

- Sec. 2331. Repeal of exclusion of for-profit organizations from research and demonstration grants.*
- Sec. 2332. Presidential appointment of and pay level for the administrator of the health care financing administration.*
- Sec. 2333. Exclusion of certain entities owned or controlled by individuals convicted of medicare- or medicaid-related crimes.*
- Sec. 2334. Provider representation in peer review organizations.*
- Sec. 2335. Repeal of special tuberculosis treatment requirements under medicare and medicaid.*
- Sec. 2336. Access to home health services.*
- Sec. 2337. Normalization of trust fund transfers.*
- Sec. 2338. Enrollment and premium penalty with respect to working aged provision.*
- Sec. 2339. Indirect payment of supplementary medical insurance benefits.*
- Sec. 2340. Certification of psychiatric hospitals.*
- Sec. 2341. Included podiatrists in definition of "physician" for outpatient physical therapy services and including podiatrists and dentists in definition of "physician" for outpatient ambulatory surgery.*
- Sec. 2342. Establishment by physical therapists of plans for physical therapy.*
- Sec. 2343. Hospice contracting for core services.*
- Sec. 2344. Medicare recovery against certain third parties.*
- Sec. 2345. Confidentiality of accreditation surveys.*
- Sec. 2346. Use of additional accrediting organizations under medicare.*
- Sec. 2347. Funding for PSRO review.*
- Sec. 2348. Payment for services following termination of participation agreements with home health agencies or hospice programs.*
- Sec. 2349. Elimination of health insurance benefits advisory council.*
- Sec. 2350. Health maintenance organizations and competitive medical plans.*
- Sec. 2351. Judicial review of provider reimbursement review board decisions.*
- Sec. 2352. Flexible sanctions for noncompliance with requirements for end stage renal disease facilities.*

*Sec. 2353. Payments to promote closure and conversion of underutilized hospital facilities.*

*Sec. 2354. Miscellaneous technical corrections relating to medicare.*

*Sec. 2355. Waivers for social health maintenance organizations.*

#### *Subtitle B—Medicaid and Maternal and Child Health Amendments*

*Sec. 2361. Medicaid coverage for payment women and children. ....*

*Sec. 2362. Clarification of medicaid entitlements for certain newborns.*

*Sec. 2363. Recertification of SNF and ICF patients.*

*Sec. 2364. Waiver of certain membership requirements for certain health maintenance organizations.*

*Sec. 2365. Increase in Medicaid ceiling amount for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.*

*Sec. 2366. Payment for psychiatric hospital services.*

*Sec. 2367. Mandatory assignment of rights of payment by medicaid recipients.*

*Sec. 2368. Requirements for medical review and independent professional review under medicaid.*

*Sec. 2369. Flexibility in setting payment rates for hospitals furnishing long-term care services under medicaid.*

*Sec. 2370. Authority of the Secretary to issue and enforce subpoenas under medicaid.*

*Sec. 2371. Medicaid clinic administration.*

*Sec. 2372. Increase in authorization for maternal and child health block grant.*

*Sec. 2373. Miscellaneous and technical amendments.*

#### *Subtitle C—Recovery of Hill-Burton Funds*

*Sec. 2381. Recovery of Hill-Burton funds.*

#### *Subtitle D—Uncompensated Services Provided by Skilled Nursing Facilities and Intermediate Care Facilities*

*Sec. 2391. Study.*

## **Subtitle A—Medicare Amendments**

## **PART I—REIMBURSEMENT AND BENEFIT CHANGES**

### **MODIFICATION OF WORKING AGED PROVISION**

**SEC. 2301.** (a) Section 1862(b)(3)(A)(i) of the Social Security Act is amended by striking out "over 64 but" each place it appears.

(b) Section 4(g)(1) of the Age Discrimination in Employment Act of 1967 is amended—

(1) by inserting ", and any employee's spouse aged 65 through 69," after "aged 65 through 69"; and

(2) by inserting ", and the spouse of such employee," after "same conditions as any employee".

(c)(1) The amendment made by subsection (a) shall be effective with respect to items and services furnished on or after January 1, 1985.

(2) The amendment made by subsection (b) shall become effective on January 1, 1985.



praisals by the Veterans' Administration, and assessments of home-buyer credit worthiness;

(B) the Administrator's evaluation of the effects of the amendments made by subsection (a) (relating to acquisition of properties after liquidation sales and to vendee loans), including the Administrator's evaluation of the effects of subsection (d) of section 1816 of title 38, United States Code (as added by subsection (a)(2)) (relating to vendee loans), on the operation and effective functioning of such program; and

(C) the recommendations of the Administrator regarding any need for administrative or legislative action with respect to such program, including the Administrator's recommendations as to whether or not subsection (c)(2) (providing for the termination of provisions relating to the acquisition of properties and to vendee loans) should be amended.

## **TITLE VI—OASDI, SSI, AFDC, AND OTHER PROGRAMS**

### **TABLE OF CONTENTS**

#### **Subtitle A—Improvements in OASDI Program**

- Sec. 2601. Social security coverage for Federal employees; treatment of legislative branch employees not covered by civil service retirement system.*
- Sec. 2602. Procedures to prevent overpayments due to failure to report earnings.*
- Sec. 2603. Special social security treatment for church employees.*

#### **Subtitle B—Improvements in SSI and AFDC Programs**

##### **PART I—IMPROVEMENTS IN SSI PROGRAM**

- Sec. 2611. Increase in dollar limitations under assets test.*
- Sec. 2612. Limitation on recoupment rate in case of overpayments.*
- Sec. 2613. Treatment of overpayments when recipient's countable assets exceed limits in certain cases.*
- Sec. 2614. Exclusion of underpayments from resources.*
- Sec. 2615. Adjustments in SSI benefits on account of retroactive benefits under title II.*
- Sec. 2616. Exclusion from income of certain Alaska bonus payments.*

##### **PART 2—IMPROVEMENTS IN AFDC PROGRAM**

- Sec. 2621. Gross income limitation.*
- Sec. 2622. Work expense deduction.*
- Sec. 2623. Continuation of \$30 disregard from earned income.*
- Sec. 2624. Work transition in the case of certain families who lose AFDC benefits because of earned income.*
- Sec. 2625. Clarification of earned income provision.*
- Sec. 2626. Exclusion of burial plots, funeral agreements, and certain property from limitation on family resources.*
- Sec. 2627. Federal matching for expenses incurred by States in reimbursing AFDC recipients for transportation and day care costs attributable to participation in CWEP.*
- Sec. 2628. Monthly reporting and retrospective budgeting.*
- Sec. 2629. Treatment of earned income tax credit in determining countable income.*
- Sec. 2630. Federally assisted pilot projects to demonstrate one-stop service delivery systems.*
- Sec. 2631. Exemption of certain pregnant women from registration for work or training.*
- Sec. 2632. Treatment of nonrecurring lump sum income.*
- Sec. 2633. Waiver of overpayment recoupment when cost of collection would exceed amount due.*
- Sec. 2634. Exceptions to requirements for protective payments.*
- Sec. 2635. Eligibility requirements for aliens.*
- Sec. 2636. Provision by State agencies of information regarding fugitive felons.*
- Sec. 2637. Payment schedule for reimbursement of certain back claims due the States.*

- Sec. 2638. Modification of requirements for work supplementation program.  
 Sec. 2639. 3-year extension of provisions for disregarding in-kind assistance.  
 Sec. 2640. Parents and siblings of dependent child included in AFDC family; child support payments.  
 Sec. 2641. CWEP work for Federal agencies.  
 Sec. 2642. Earned income of full-time students.  
 Sec. 2643. General effective date.

*Subtitle C—Implementation of Grace Commission Recommendations*

- Sec. 2651. Income and eligibility verification procedures.  
 Sec. 2652. Collection and deposit of payments to executive agencies.  
 Sec. 2653. Collection of non-tax debts owed to Federal agencies.

*Subtitle D—Technical Corrections*

- Sec. 2661. Changes in OASDI provisions necessitated by the 1983 Amendments.  
 Sec. 2662. Changes in text of the 1983 Amendments.  
 Sec. 2663. Other technical corrections in the Social Security Act and related provisions.  
 Sec. 2664. Effective dates.

*Subtitle E—Trade Adjustment Assistance*

- Sec. 2671. Limitations on trade readjustment allowances.  
 Sec. 2672. Job search and relocation allowances.  
 Sec. 2673. Assistance to industry.

*Subtitle F—Certain Provisions Relating to Puerto Rico and the Virgin Islands*

- Sec. 2681. Clarification of definition of articles produced in Puerto Rico or the Virgin Islands.  
 Sec. 2682. Limitations on transfers of excise tax revenues to Puerto Rico and the Virgin Islands.

*Subtitle A—Improvements in OASDI Program*

**SOCIAL SECURITY COVERAGE FOR FEDERAL EMPLOYEES; TREATMENT OF LEGISLATIVE BRANCH EMPLOYEES NOT COVERED BY CIVIL SERVICE RETIREMENT SYSTEM**

**SEC. 2601.** (a)(1) Section 210(a)(5)(B) of the Social Security Act is amended to read as follows:

“(B) is performed by an individual who—

“(i) has been continuously performing service described in subparagraph (A) since December 31, 1983, and for purposes of this clause—

“(I) if an individual performing service described in subparagraph (A) returns to the performance of such service after being separated therefrom for a period of less than 366 consecutive days, regardless of whether the period began before, on, or after December 31, 1983, then such service shall be considered continuous,

“(II) if an individual performing service described in subparagraph (A) returns to the performance of such service after being detailed or transferred to an international organization as described under section 3343 of subchapter III of chapter 33 of title 5, United States Code, or under section 3581 of chapter 35 of such title, then the service performed for that organization shall be considered service described in subparagraph (A),

States Code, are the principles specifically designed to guide postal management in determining service levels.

The conference intends to ensure compliance with these principles and the provisions of section 2209 as statutory requirements for effective postal services. Any proposal which would, if implemented, reduce the number of days each week for regular mail delivery, or diminish the frequency or quality of delivery service in accordance with the standards for delivery service in effect at the present time, would violate the provisions of section 2209. To consider such a proposal, in the view of the conference managers, is to "take any action," and therefore also would violate the specific language of the prohibition contained in section 2209.

#### RETIREMENT COST-OF-LIVING ADJUSTMENTS DURING FISCAL YEARS 1986 AND 1987

##### *House amendment*

The House amendment contains a provision to limit cost of living adjustments for military and civilian retirees under age 62 to one-half the actual cost of living adjustment in fiscal years 1986 and 1987.

##### *Senate amendment*

The Senate amendment has no comparable provision.

##### *Conference agreement*

The House recedes to the Senate.

#### PAY INCREASES FOR CERTAIN EMPLOYEES IN PANAMA

##### *House amendment*

The House amendment includes no provision in this area.

##### *Senate amendment*

Section 1206 of the Senate amendment provides pay raises for federal employees in the Panama Canal Zone.

##### *Conference agreement*

The Senate recedes to the House.

#### Title 3—Medicare, Medicaid, and Maternal and Child Health Amendments

##### 1. Short Title (Section 2300)

##### *Present law*

No provision.

##### *House bill*

The House bill would specify that the short title of the bill is "Medicare and Medicaid Budget Reconciliation Amendments of 1984."

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

## **Subtitle A.—Medicare Amendments**

### **2. Payment for Costs of Hospital-Based Mobile Intensive Care Units (Section 2320)**

*Present law*

Ambulance services are reimbursed under Part B of Medicare. The patient is responsible for a coinsurance payment of 20 percent.

#### **a. Medicare payments**

*House bill*

The House bill would provide that Medicare make payment to hospitals under Part A for the operation of mobile intensive care units if certain conditions are met.

*Senate amendment*

Similar provision.

*Conference agreement*

The conference agreement follows the House bill.

#### **b. Hospital requirements**

*House bill*

The House bill would specify that the hospital must be located in a State which has a statewide prospective payment system approved by HHS either under a demonstration waiver or under the new Section 1886(c) programmatic waiver.

*Senate amendment*

The Senate amendment would specify that the hospital must be located in New Jersey and operating under a demonstration project approved under Sec. 402 of the 1967 amendments.

*Conference agreement*

The conference agreement follows the Senate amendment.

#### **c. Application of provision**

*House bill*

The House bill would provide that where the State has a demonstration waiver, the provision would apply unless the State notifies the Secretary of HHS, within 30 days of the date of enactment of this bill, that the State does not want the provision to apply.



*Senate amendment*

Similar provision.

*Conference agreement*

The conference agreement follows the Senate amendment.

**d. Notification***House bill*

The House bill would provide that in the case of a Section 1886(c) waiver, the State must notify the Secretary within such reasonable period as the Secretary may establish if the State does not want the provision to apply.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House provision.

**e. Required assurances***House bill*

The House bill would require the State to provide satisfactory assurances that total Medicare and Medicaid payments to the hospitals covered under the State system will not exceed the total payments which would have been made if the State were not under a waiver.

*Senate amendment*

Same as House bill.

**f. Effective date***House bill*

The House bill would make the provision retroactive to January 1, 1983.

*Senate amendment*

The Senate amendment would be effective upon enactment. Payment under Part A would only be permitted for the duration of the current waiver.

*Conference agreement*

The conference agreement specifies that the provision is effective on enactment and until such time as the waiver is terminated. However, the provision may not be terminated prior to 90 days after the publication of the final regulations implementing the Section 1886(c) programmatic waiver authority.



### **3. Removing Costs of Nurse Anesthetists From DRG-Based Payments (Section 2312)**

#### *Present law*

Medicare's payments to hospitals under Part A are based on the diagnosis of the patient and are intended to cover all the services that hospitals customarily furnish in caring for patients with a specified diagnosis. All non-physician services provided to hospital inpatients can be paid for only under Part A. However, the Department of Health and Human Services (HHS), in its regulations governing hospital payments, established a temporary provision to provide for a transition with respect to payment for the services of certified registered nurse anesthetists (CRNA's) billed under Part B. The regulations provide that, if a physician employed nurse anesthetists during a designated period prior to implementation of prospective payment, then that physician may continue to receive payment from Medicare Part B for CRNA's through the hospital's cost reporting periods beginning before October 1, 1986.

#### **a. Revision in definition of operating costs**

##### *House bill*

The House bill would remove from the definition of "operating costs of inpatient hospital services" for purposes of prospective payment, costs related to employment of, or contracts for, professional services of certified registered nurse anesthetists. Thus, such costs would be reimbursed on a "pass through" basis.

##### *Senate amendment*

The Senate amendment includes a similar provision.

##### *Conference agreement*

The conference agreement follows the Senate amendment, with a modification to clarify that the provision is limited to anesthesia services furnished by certified registered nurse anesthetists.

The conferees intend that the term "anesthesia services" means those related to the preparation for, administration of, and recovery from anesthesia.

#### **b. Payments to hospitals**

##### *House bill*

No provision.

##### *Senate amendment*

The Senate amendment would require the Secretary to provide an additional payment amount to hospitals which are operating under the prospective payment system for the hospital's reasonable costs incurred for anesthesia services provided by a CRNA. Such reasonable costs could not be based on a greater number of CRNA's than were employed by a hospital in 1982, unless the Secretary determined that changes in patient volume, patient mix, or a loss of physician services required otherwise.

*Conference agreement*

The conference agreement follows the Senate amendment with modification. It strikes the portion of the Senate amendment which limits (with certain exceptions) reasonable cost payments to those based on the number of CRNA's employed by a hospital in 1982.

**c. Study***House bill*

The House bill requires the Secretary to include recommendations on the advisability and feasibility of determining payments for CRNA's on the basis of DRG's in the report to Congress on physicians' services to hospital inpatients.

*Senate amendment*

The Senate amendment requires the Secretary to study possible Medicare reimbursement methods which would not discourage the use of CRNA's by hospitals and to report to Congress as soon as is practicable.

*Conference agreement*

The conference agreement follows the Senate amendment.

**d. Effective date***House bill*

The House bill would be effective for hospital cost reporting periods beginning on or after October 1, 1984 and before October 1, 1986.

*Senate amendment*

The Senate amendment would be effective for hospital cost reporting periods beginning on or after October 1, 1984.

*Conference agreement*

The conference agreement follows the House provision with a modification to move the termination date to October 1, 1987.

It is the understanding of the conferees that, in conjunction with this legislation, the Administration intends to continue to permit those physicians who employed nurse anesthetists, as of cost reporting periods ending before September 30, 1983, to continue to bill for CRNA services. In addition, it is the understanding of the conferees that the Administration intends to modify the regulations to permit physicians who did not employ CRNA's before the specified date to bill for the services of CRNA's whom they have subsequently employed. The conferees believe the modification with respect to physicians employing CRNA's for the first time is appropriate, on the understanding that these billing arrangements will be permitted only during the same time period the provisions of this amendment are in effect. Similarly, the conferees expect that the regulations with respect to physicians already employing CRNA's will be terminated on the same date as this amendment.

#### 4. Determination of Hospital Area Wage Index (Section 2316)

##### *Present law*

Medicare payments to hospitals under the prospective payment system must be adjusted to reflect the hospital wage level in a hospital's geographic area relative to the national average hospital wage level.

##### **a. Adjustment report**

##### *House bill*

The House bill would require the Secretary to develop, in consultation with the Secretary of Labor and the Commissioner of the Bureau of Labor Statistics, methods of refining and improving the adequacy and equity of the area wage indices and to report to Congress on such developments not later than June 1, 1984.

##### *Senate amendment*

The Senate amendment would require the Secretary, in consultation with the Secretary of Labor, to conduct a study to develop an appropriate index to adjust the prospective payment amounts to reflect area differences in average hospital wage levels, taking into account wage differences of full-time and part-time workers. The Secretary would be required to report the results of the study to Congress prior to May 1, 1984.

##### *Conference agreement*

The conference agreement follows the Senate amendment with a modification specifying that the report is due 30 days after enactment.

##### **b. Payment adjustments**

##### *House bill*

No provision.

##### *Senate amendment*

The Senate amendment would require the Secretary to adjust hospital payment amounts for cost reporting periods beginning on or after October 1, 1983, to reflect any changes made in the wage index as a result of the study. Overpayments or underpayments for the first cost reporting period of a hospital beginning on or after October 1, 1983, would be made by decreasing or increasing payments in the succeeding cost reporting period.

##### *Conference agreement*

The conference agreement includes the Senate amendment.

##### **c. Adjustment criteria**

##### *House bill*

The House bill would require the Secretary to establish criteria under which, to the extent deemed appropriate, a hospital's wage index adjustment would be modified if the hospital could demon-

strate that its wage adjustment did not accurately reflect the wage levels in the labor market serving the hospital. Such adjustment would be made in a subsequent fiscal year to take into account a difference in payment amounts occurring in the current fiscal year resulting from a wage index inaccuracy.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House provision with a modification. The Secretary is directed to conduct a study, and include in his final report, proposed criteria by which an adjustment could be made in a hospital's wage index if such index did not accurately reflect the hospital wage levels in the labor market area serving the hospital.

**5. Delay of Effective Date for Single Reimbursement Limit for Skilled Nursing Facilities. Skilled Nursing facility Reimbursement (Section 2319)**

*Present law*

TEFRA required the Secretary to establish a single payment limit for both freestanding and hospital-based skilled nursing facilities (SNF's), effective October 1, 1982. Prior to that time, separate limits were established for these two types of facilities in recognition of the fact that the operating costs of hospital-based facilities were typically much higher than those of the freestanding facilities.

In the Social Security Amendments of 1983 (P.L. 98-21), the effective date of the single-limit requirement was postponed for one year until October 1, 1983. In addition, the Congress required the Secretary to report by December 31, 1983 on the effect of the implementation of the single-rate provision on hospital-based SNF's, given the difference (if any) in the patient populations served by such facilities and by freestanding SNF's. Further, the Secretary was required to report by the end of 1983 on the impact of hospital prospective payment on SNF's.

**a. Effective date**

*House bill*

The House bill would postpone implementation of the single reimbursement limit for SNF's until April 1, 1984.

*Senate amendment*

The Senate amendment would provide that for cost reporting periods beginning on or after October 1, 1982 and prior to July 1, 1984, hospital-based facilities and freestanding facilities would be paid on the same basis used to calculate reimbursement limits that had been in effect prior to the passage of TEFRA.

*Conference agreement*

The conference agreement follows the Senate amendment.



## **b. Calculation of limits**

### *House bill*

No provision.

### *Senate amendment*

The Senate amendment would provide that for cost reporting periods beginning on or after July 1, 1984 separate limits would continue to be established for free-standing facilities in urban and rural areas at 112 percent of the mean operating costs of urban and rural freestanding facilities, respectively. Limits for urban or rural hospital-based facilities would be set at the appropriate free-standing facility limit plus 50 percent of the difference between the freestanding facility limit and 112 percent of mean operating costs for hospital-based facilities. Cost differences between hospital-based and free-standing facilities attributable to excess overhead allocations resulting from Medicare reimbursement principles would be recognized as an add-on to the limit.

Adjustments would be made to take account of differences in wage levels prevailing in a facility's area. Exceptions could be granted based upon case mix or circumstances beyond the control of the facility be it either a free standing or hospital-based facility.

### *Conference agreement*

The conference agreement follows the Senate amendment.

## **c. Report**

### *House bill*

No provision.

### *Senate amendment*

The Senate amendment would require the Secretary to submit the report required by Social Security Amendments of 1983 by April 15, 1984.

### *Conference agreement*

The conference agreement follows the Senate amendment with a modification to require submission of the report by December 1, 1984.

## **d. Prospective payment proposals**

### *House bill*

No provision.

### *Senate amendment*

The Senate amendment would require the Secretary to submit by December 1, 1984, a proposal for a prospective payment system for SNF's taking into account case-mix differences between providers. The proposal should be designed so as to permit inclusion of payments to hospital-based SNF's within the DRG system and to permit implementation on October 1, 1985.



### *Conference agreement*

The Conference agreement follows the Senate amendment with a modification. The Secretary is required to submit to Congress by August 1, 1984, the results of the study required by TEFRA relating to the development of legislative proposals for prospective reimbursement of SNF's. In addition, the Secretary is required to report to the Congress by December 1, 1984 on the range of options available for prospective payment of SNF's. Included in the study should be an examination of the feasibility advisability and methods of incorporating into the hospital DRG system payments for SNF services. This examination should take into account case mix differences between providers.

The Conferees wish to express their concern over the protracted delays which have occurred in the submission of reports required by law. The Conferees expect and intend that the SNF reports required by this and previous laws shall be submitted on a timely basis.

## **6. Limitation on Increase In Hospital Costs Per Case (Section 2310)**

### *Present law*

TEFRA expanded previously existing limits on Medicare costs effective October 1, 1982. Among other things, it established a 3-year target rate reimbursement system which limited allowable rates of increase in Medicare payments per case over the fiscal year 1983-1985 period. The target rate is equal to the previous year's allowable operating costs per case (or after the first year, the previous year's target amount) increased by the percentage increase in the hospital wage and price index (market basket (MB)) plus 1 percentage point. Penalties and bonuses were established for hospitals, with costs above and below the target.

The "Social Security Amendments of 1983" (Public Law 98-21) provided for the establishment of a prospective payment system for certain hospitals to be phased-in over a 3-year period. During the transitional period, a portion of a hospital's payments will be based on the new Federal prospective payment rates and a portion on each hospital's own cost base. In the first year, the blend is 75 percent hospital specific and 25 percent the appropriate Federal rate; in the second year, the blend is 50/50; in the third year, the blend is 25 percent hospital specific and 75 percent the appropriate Federal rate.

The Federal rates are derived from historical Medicare cost data. For fiscal years 1984 and 1985, payment amounts from the previous fiscal years would be increased by the market basket, plus one percentage point. For fiscal years beginning on or after October 1, 1986, the rate of increase is left to the discretion of the Secretary.

Those hospitals and hospital units exempt from the prospective payment system are paid on the basis of historical costs subject to the existing rate of increase limits which provide for an annual rate of increase of MB plus 1 percentage point. For accounting years beginning on or after October 1, 1986, the rate of increase is left to the discretion of the Secretary.

### a. Rate of increase limits

#### *House bill*

No provision.

#### *Senate amendment*

The Senate amendment would limit, for two hospital cost reporting periods beginning on or after October 1, 1984, the rate of increase in the hospital specific portion of the payment amount to the market basket minus one-half percentage point. The rate of increase in the Federal portion of the payment amounts during fiscal years 1985 and 1986 would be limited to the market basket plus one-half percentage point.

#### *Conference agreement*

The conference agreement follows the Senate amendment with a modification. The modification specifies that the rate of increase applicable for hospitals in fiscal year 1985 shall be market basket plus one-quarter of one percentage point. However, budget neutrality would continue to apply in fiscal year 1985. In fiscal year 1986, the rate of increase may not exceed the market basket plus one-quarter percentage point. The Secretary, taking into account the recommendations of the Prospective Payment Commission, would have authority to establish a rate of increase, as under current law, but at a rate not in excess of market basket plus one-quarter of one percentage point.

Recognizing that budget neutrality will be a primary consideration in the establishment of the fiscal year 1985 hospital payment rates, the conferees are nevertheless concerned about the perception that they may be unfair and inequitable. The conferees realize that the appropriateness of the new levels of payment will be vital to the success of the full implementation of the prospective payment system. This provision deals with but one factor which is taken into consideration when new rates are set. For the future those rates will be determined by the Secretary and the Prospective Payment Assessment Commission. Nevertheless, the conferees urge the Secretary to carefully evaluate the potential impact of the proposed rates on the long-term success of the prospective payment system.

### b. Limits for Exempted Hospitals

#### *House bill*

No provision.

#### *Senate amendment*

The Senate amendment would provide that exempted hospitals and exempted hospital units would be subject to similar rate of increase limitations applicable to their costs ( $MB - \frac{1}{2}$  and  $MB + \frac{1}{2}$ ) in the same proportion as hospitals under the prospective payment system with the same accounting years. This would result in a rate of increase for exempted hospitals of  $MB$  in the first year and  $MB + \frac{1}{4}$  in the second year.

*Conference agreement*

The conference agreement follows the Senate amendment with a modification. The modification provides that the rate of increase for exempted hospitals and exempted hospital units shall not exceed market basket plus one-quarter percentage point in the first year and shall not exceed market basket plus one-quarter of one percentage point in the second year.

The Secretary, taking into account the recommendations of the Prospective Payment Commission, shall continue to have authority to establish a rate of increase, as under current law, but not more than market basket plus one-quarter of one percentage point during the applicable period.

## **7. Classification of Certain Rural Hospitals (Section 2311)**

### **a. Redesignation of urban facilities**

*Present law*

Public Law 98-21 provided for the establishment of a prospective payment system for hospitals based on DRG's (diagnosis-related groups). The system is to be phased-in during a three year transition period during which a declining portion of the total prospective payment will be based on the hospital's specific rate and an increasing portion on the Federal rate. Different Federal rates are calculated for hospitals located in rural areas and hospitals located in urban areas.

Urban areas are metropolitan statistical areas (currently MSA's, previously SMSA's) or New England county metropolitan areas (NECMA's) as well as five specified counties in New England. All other areas are rural areas. The determination as to whether or not an area is urban or rural is made by the Office of Management and Budget. The determinations are periodically changed. In June of 1983, a large number of statistical areas were redesignated.

*House bill*

No provision.

*Senate amendment*

The Senate amendment would provide that hospitals located in counties redesignated as rural since enactment of the prospective payment system would be allowed a two year transition to the rural rates. In the first year, the hospital would be paid the rural rate plus two-thirds of the difference between its rural and urban rate. In the second year, it would be paid the rural rate plus one-third the difference between the rural and the urban rates.

*Conference agreement*

The conference agreement follows the Senate amendment.

### **b. MSA's**

*Present law*

Separate Federal rates are calculated for the 9 regions (census divisions). In some cases, MSA's are located in more than one region



resulting in hospitals in the same MSA receiving different payment amounts based on different Federal rates.

*House bill*

No provision.

*Senate amendment*

The Senate amendment would specify that a hospital located in an MSA shall be deemed to be in the region in which a majority of the hospitals are located or, at the option of the Secretary, the region which accounts for the majority of the Medicare discharges.

*Conference agreement*

The conference agreement follows the Senate amendment with a modification. The Secretary shall not recoup amounts from payments for discharges occurring in accounting years beginning prior to October 1, 1984, in those cases where a hospital is deemed to be in a lower rate region.

### **c. Regional and national referral centers**

*Present law*

Public Law 98-21 authorized the Secretary to provide exceptions and adjustments appropriate to regional and national referral centers, including those hospitals of 500 or more beds located in rural areas.

*House bill*

No provision.

*Senate amendment*

The Senate amendment would permit a hospital classified as a rural hospital to appeal to the Secretary to be classified as a rural referral center, based on criteria established by the Secretary. The criteria would allow a hospital to demonstrate that it should be reclassified by reason of certain of its operating characteristics being similar (which may include wages, scope of services, service area, and mix of medical specialties) to those of a typical urban hospital in the same region. The amendment would require that criteria must be published by June 1, 1984 for implementation by October 1, 1984. An appeal would have to be submitted within the first quarter of a hospital's cost reporting period and the Secretary would have to make a final determination on the appeal within 60 days. Payments would be retroactive to the beginning of the hospital's reporting period.

*Conference agreement*

The conference agreement follows the Senate amendment with a modification. The modification requires publication of the criteria within 30 days after enactment. Further, the modification provides that hospitals must appeal their current designation as a rural, non-referral hospital, in the quarter preceding the start of their accounting year except for the accounting year beginning on October

1, 1984 in which case an appeal would be allowed to be made until January 1, 1985.

#### d. Study

##### *House bill*

No provision.

##### *Senate amendment*

The Senate amendment would require the Secretary to conduct a study on the advisability of making adjustments in the nonlabor component of those DRG's which have high fixed nonlabor costs. The report is due to Congress within 6 months after the date of enactment.

In addition the Secretary is required to study the degree of variation in inpatient costs within each DRG. The study must also present alternative means of computing payments and a discussion of the merits of a method of payment under which a percentage of the payment amount could be determined on a regional basis. The report is due to Congress prior to September 1, 1984.

##### *Conference agreement*

The conference agreement follows the Senate amendment with a modification. The prospective payment system pays rural hospitals at a lower rate than urban hospitals because rural hospitals are generally less costly to operate. In developing DRG payment rates, it is assumed that labor accounts for 80% of the costs while non-labor items represent 20% of the costs. However, for some DRG's the current payment differential may be too large because a substantial part of the treatment involves non-labor costs (e.g., the costs of medical devices such as artificial hips) which do not vary between urban and rural areas. Therefore, the Secretary is directed to review the urban/rural payment differential with respect to such DRGs and report the findings to the Committees on Ways and Means and Finance within 6 months of the date of enactment.

Additionally, the Secretary would be required to study the advisability and feasibility of varying by DRG the proportion of the labor and non-labor components of the Federal payment amount, instead of applying the average proportion of those components to all DRGs.

It is the intent of the conferees that, in studying methods of payment made on a regional basis, the Secretary shall take into consideration regional variations in economic environment such as unemployment rates, the share of publicly funded patients, and the relationship of regional economic indicators to regional health care costs. In addition, the study shall consider scope of services, potential limitation on access to services, and service area characteristics such as market basket prices; labor market; economic base; and population growth, density and age. The study shall also address such factors as construction, utility and transportation costs.



### e. Effective date

#### *House bill*

No provision.

#### *Senate amendment*

The Senate amendment would specify that the provisions (except for required reports) are effective with respect to cost reporting periods beginning on or after October 1, 1983.

#### *Conference agreement*

The conference agreement specifies that items (a) and (b) are effective for accounting years beginning on or after October 1, 1983. Item (c) is effective for accounting years beginning on or after October 1, 1984. These provisions are budget neutral for those years in which budget neutrality applies.

### f. Additional considerations

Under a provision of the 1980 amendments, small rural hospitals are allowed to temporarily participate in Medicare under certain circumstances even though they are unable to meet the Medicare requirement that they provide 24-hour nursing. One of the conditions is that the hospital's lack of nursing must be due to a temporary nurse shortage and that the hospital is making a good faith effort to comply with the program's nursing standards.

The conferees believe that in assessing the hospital's effort to attract personnel, consideration should be given to the economic conditions in the area in which the hospital is located and the community's ability to attract and pay skilled hospital staff and provide employment for a spouse. Specifically, factors such as rate of unemployment, relative poverty and hardship resulting from natural disasters or economic dislocation should be identified and given weight.

In the case of a facility which functions as a sole community provider, or where a hospital is located in a geographically remote area, care shall be taken to ensure that hospital emergency services continue to be accessible to area residents.

## 8. Prospective Payment Assessment Commission (Section 2313)

#### *Present law*

Public Law 98-21 established the Prospective Payment Assessment Commission, which is required to assist the Department of Health and Human Services (HHS) and the Congress with issues arising from the new prospective payment system. The Commission is required to make recommendations concerning the annual percentage increase factor for diagnosis related group (DRG) payment rates and changes in the DRG's based on its evaluation of scientific evidence with respect to new practices, including the use of new technologies and treatment modalities.

#### *House bill*

No provision.

*Senate amendment*

The Senate amendment would clarify that the Commission is an independent body responsible for requesting appropriations. It would authorize an Executive Director and exempt the Commission from competitive public bidding and from open meeting requirements. In addition, it would authorize the Secretary to supplement the Commission's activities by carrying out or awarding grants or contracts for original research and experimentation, including clinical research. It would require the Secretary to provide the Commission with basic support services which are to be reimbursed from the Commission's appropriations. It would provide that physicians serving as personnel may be provided a physician comparability allowance.

*Conference agreement*

The conference agreement follows the Senate amendment with a modification. The modification permits closure of meetings, or portions thereof, upon the affirmative vote of a majority of the Commission members. The modification would not require the Secretary to provide the Commission with basic support services.

**9. Hospice Contracting for Core Services (Section 2343)***Present law*

Public Law 97-248, the "Tax Equity and Fiscal Responsibility Act of 1982," authorized for the period November 1, 1983, to October 1, 1986, Medicare Part A coverage for hospice services provided to terminally ill Medicare beneficiaries with a life expectancy of six months or less. The law specifies that a hospice must routinely provide directly, substantially all of the following "core services": nursing care, medical social services, physician's services and counseling services. The remaining "non-core services" may be provided either directly by the hospice or under arrangements with others, in which case the hospice must maintain professional management responsibility for all such services furnished to an individual, regardless of the location of or facility in which such services are furnished.

Under existing regulations, a hospice may use contracted staff to meet the "core service" needs of its patients but only when necessary to supplement hospice employees during periods of peak patient loads or under extraordinary circumstances.

*House bill*

No provision.

*Senate amendment*

The Senate amendment would permit the Secretary to waive the nursing care "core services" requirement for hospices which are located in rural areas, which were in operation on or before January 1, 1983, and which have demonstrated a good faith effort to hire their own nurses. A waiver request would be granted automatically unless expressly denied by the Secretary within 60 days. The grant-

ing of a waiver would not preclude the favorable consideration of a subsequent waiver request should such a request be necessary.

The Secretary would be required to study the necessity and appropriateness of the "core services" requirement and report the findings to the Congress within 18 months after date of enactment.

### *Conference agreement*

The conference agreement follows the Senate amendment with a modification which specifies that the report on the core services requirement must be submitted to the Congress prior to January 1, 1986. This is the same date that the Secretary's report concerning the hospice program's reimbursement method and benefit structure is due.

The study to be submitted in 1986 must include not only an analysis of medicare certified hospices but also a review of non-medicare hospices. The conferees believe it is essential to have comprehensive information available to them on the characteristics of non-medicare hospices (size, affiliation, etc.) and why they are not participating in the medicare hospice benefit and if they are certified as another provider (HHA, SNF, hospital, under medicare).

## **10. Payment for Outpatient Diagnostic Laboratory Tests (Section 2303)**

### *Present law*

Diagnostic laboratory services for ambulatory patients are reimbursed by Medicare (subject to the Part B deductible and coinsurance) on the basis of reasonable charges when furnished by an independent laboratory or physician. Payment for such services to hospital outpatients is on the basis of the lower of charges or reasonable cost. Certain limitations are applied on the amount Medicare and Medicaid will pay a physician for laboratory services when the services are performed by an independent laboratory.

### **a. Fee schedule**

#### *House bill*

The House bill would require establishment of a national fee schedule for all laboratory services except those provided to hospital inpatients. Payment would be based on the fee schedule unless the actual charge is lower. The fee schedule could initially be established on a statewide or regional basis; within three years the Secretary would be required to develop and implement a national fee schedule.

#### *Senate amendment*

The Senate amendment would include a similar provision except the fee schedule would be established on an area-wide basis as determined by the Secretary. The fee schedule would be established for the period May 1, 1984 to October 1, 1987.

#### *Conference agreement*

The conference agreement follows the House bill with an amendment. A fee schedule for independent clinical laboratories (includ-



ing hospital laboratories furnishing services to persons who are not patients of the hospital) and for laboratory services conducted in physician's offices is to be established at 60 percent of the prevailing charge levels for the fee screen year beginning July 1, 1984. After three years, payments will be made on the basis of a national fee schedule. (The fee schedule will not apply to clinical laboratory tests furnished by ESRD facilities and included in the ESRD composite rate).

For hospital-based laboratory services serving hospital outpatients a fee schedule based on a carrier or regional area is to be established at 62 percent of the prevailing charge levels for the fee screen year beginning July 1, 1984. After the three-year period, the reimbursement for such hospital labs would revert to cost reimbursement unless the Congress acted to include them in a national fee schedule.

The agreement requires the Secretary to report on the advisability of continuing a fee schedule for hospital-based laboratories serving hospital outpatients, and if such schedule is advisable, the appropriate fee level.

#### **b. Adjustments in fee schedule**

##### *House bill*

The House bill permits the Secretary to provide for adjustments to account for wage variations.

##### *Senate amendment*

No provision.

##### *Conference agreement*

The conference agreement follows the House bill.

#### **c. Initial payment level**

##### **i. Establishment**

##### *House bill*

The House bill would establish the initial payment level for the fee schedule at 60 percent of the prevailing charge level for the fee screen year beginning July 1, 1984.

##### *Senate amendment*

The Senate amendment would establish the initial payment level at 60 percent of the prevailing charge for tests performed in independent labs and in physicians offices for the fee screen year beginning July 1, 1983. For tests performed in hospital labs the comparable percentage would be 62 percent of the prevailing charge level.

##### *Conference agreement*

The conference agreement follows the Senate amendment with a modification. The initial payment level is set at 62% of the prevailing charge level for services provided by hospital-based laboratories serving hospital outpatients and 60% of the prevailing charge level for services provided by hospitals when acting as independent lab-

oratories. The computation is based on the prevailing charge levels in effect for the fee screen year beginning July 1, 1984. The conferees intend that all clinical diagnostic laboratory services, including those currently subject to payment at the 25th percentile, are to be paid on the basis of the fee schedule.

The conferees intend that in those States that already require direct billing for laboratory services the Secretary will take into account the fee levels in surrounding States when establishing the fee levels in direct billing States.

## **ii. Adjustments**

### *House bill*

The House bill would require the Secretary to adjust the fee schedules annually to reflect changes in the Consumer Price Index for all Urban Consumers (U.S. city average).

### *Senate amendment*

Same as the House bill.

## **iii. Additional adjustments**

### *House bill*

The House bill would permit the Secretary to make additional adjustments based on technological changes.

### *Senate amendment*

The Senate amendment would permit the Secretary to make adjustments or exceptions to the fee schedule to assure adequate reimbursement for: (a) emergency laboratory tests needed for the provision of bona fide emergency services in a hospital emergency room, and (b) certain low volume high-cost tests where highly sophisticated equipment or extremely skilled personnel are necessary to assure quality.

### *Conference agreement*

The conference agreement follows the Senate amendment with a modification to allow adjustments based on technological changes and to allow the payment of bona fide emergency services in other than a hospital emergency room.

## **d. Payment to independent and hospital labs**

### *Present law*

Present law includes the following provisions with respect to payment to independent and hospital labs:

(i) With respect to lab services provided to outpatients by independent labs, assignment can be taken on a case-by-case basis.

(ii) Current law requires hospitals providing lab services to their hospital outpatients to accept assignment. No assignment is required in the case of non-hospital patients receiving lab services from a hospital serving as an independent lab.



(iii) Medicare is permitted to waive the coinsurance requirements for those cases where the laboratory agrees to accept a negotiated fee. (Provision never implemented.)

#### *House bill*

The House bill would make the following changes:

- (i) Independent labs would be required to accept Medicare assignment;
- (ii) Services conducted by hospital labs for non-hospital patients would have to be accepted on an assignment basis; and
- (iii) Medicare would waive the deductible and coinsurance requirements and pay 100% of the fee screen amount or charge, whichever is lower, for those cases which are accepted on assignment.

#### *Senate amendment*

The Senate amendment would, as under current law, permit independent labs and hospital labs providing services for non-hospital patients to choose to accept assignment on a case-by-case basis. The Senate amendment includes a similar provision with respect to waiver of cost-sharing charges.

#### *Conference agreement*

The conference agreement follows the House bill with a modification. The Secretary is given flexibility to permit an independent laboratory to bill for all of the tests performed for a patient, even if some, but not all, of the tests were done by another laboratory on referral from the laboratory submitting the bill.

### **e. Payment for physicians' services**

#### *Present law*

Under current law, physicians may bill for laboratory services regardless of whether they personally performed or supervised the test. When billing, the physician is permitted to choose on a case-by-case basis whether to accept assignment.

#### *House bill*

The House bill would permit physicians to bill for clinical laboratory services only if the physician (or another physician with whom the physician shares his practice) personally performed or supervised the performance of the test. As under current law, the physician could choose to accept or not to accept assignment. When the physician accepts assignment, Medicare reimbursement would be at 100 percent of the fee schedule amount, and the coinsurance and deductible would not apply.

#### *Senate amendment*

The Senate amendment includes a similar provision.

#### *Conference agreement*

The conference agreement follows the Senate amendment with a technical modification.

## **f. Specimen fee**

### *Present law*

Under current law, physicians are permitted to bill a nominal amount to cover specimen collection and handling fees in the case of those tests performed by a laboratory and billed for by the physician. Independent laboratories are also permitted to bill for a nominal specimen collection fee in limited circumstances.

### *House bill*

The House bill would provide for the payment of a nominal fee for the collection of a patient specimen. However, the payment could be made only once per encounter to whomever draws the specimen.

### *Senate amendment*

No provision.

### *Conference agreement*

The conference agreement follows the House bill with an amendment. The conferees note that the provision is meant to extend the payment of a specimen fee to labs and hospitals for such items as venipuncture and the collection of a urine sample by catheterization. The provision is not meant to disrupt current policy with respect to fees paid for the services provided in physicians' offices or to laboratories, under limited circumstances, for items such as a visit to a remote nursing home or a patient's home.

## **g. Simplified billing arrangements**

### *House bill*

The House bill would direct the Secretary to simplify current billing requirements for laboratory services.

### *Senate amendment*

The Senate amendment includes a similar provision except that it would direct the Secretary to assure that information collected is sufficient to prevent fraud and abuse.

### *Conference agreement*

The conference agreement follows the Senate amendment. The conferees note that this provision does not require patient diagnosis to appear on bills.

## **h. Medicaid conforming provision**

### *House bill*

The House bill provides that Federal matching funds would not be available to the extent that a State paid more for a laboratory test than would be paid for such tests under the Medicare fee schedule.

### *Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

**i. Reports to Congress***House bill*

No provision.

*Senate amendment*

The Senate amendment would require the Secretary to report to the Congress prior to June 30, 1985 on recommendations with respect to direct payment of all lab fees to physicians, the basis for the formulation of a nationwide fee schedule, and any appropriate indexing mechanism for such a schedule.

*Conference agreement*

The conference agreement follows the Senate amendment with a modification. The GAO is directed to report on the impact of the new fee schedule on services, the potential impact of the move to national rates and the impact such a fee schedule would have on hospital outpatient services. The GAO is also directed to report on any changes in the volume of lab tests done by physicians or labs.

The agreement modifies the language directing the Secretary to report on the advisability and feasibility of providing for a direct payment to physicians. In addition, it delays the due date of the report to January 1, 1987.

**j. Effective date***House bill*

The House bill specifies that the provision would apply to Medicare diagnostic laboratory tests furnished on or after July 1, 1984 and Medicaid payments for calendar quarters on or after October 1, 1984.

*Senate amendment*

The Senate amendment specifies that the provision would apply to diagnostic laboratory tests furnished on or after May 1, 1984 and before October 1, 1987. The requirement that only those performing or supervising the performance of the tests bill the program, would be permanent.

*Conference agreement*

The conference agreement follows the House bill with an amendment. A fee schedule is established on a permanent basis for independent laboratories and physicians' laboratories. The fee schedule for services provided by hospitals to outpatients is effective for three years.

## 11. Coverage of Administration of Hepatitis B Vaccine (Section 2323)

### *Present law*

Current law prohibits Medicare coverage of immunizations and vaccines except in the case of pneumococcal vaccine which Congress specifically covered in 1980.

### a. Coverage

#### *House bill*

The House bill would cover hepatitis B vaccine for high risk medicare beneficiaries when it is administered in a hospital or renal dialysis facility. It would authorize the Secretary to provide payments that reasonably reflect the cost of efficiently providing and administering hepatitis B vaccine.

#### *Senate amendment*

The Senate amendment includes a similar provision but it would limit coverage to ESRD patients. It would give the Secretary flexibility in the development of payment methods for vaccine administration at or through a renal dialysis facility. Payment for vaccine administered to an individual receiving dialysis, but not at or through a dialysis facility, would be either included in the comprehensive fee paid for physician ESRD services, or on a reasonable charge or other basis.

#### *Conference agreement*

The conference agreement would follow the House bill with an amendment. Coverage is permitted for high and intermediate risk individuals. The conferees anticipate that the Secretary will develop coverage guidelines using available information to define those groups at high and intermediate risk of contracting the disease, using specifically, but not necessarily exclusively, the information developed by the Centers for Disease Control (CDC).

The conference agreement permits a separate payment for vaccines for patients receiving dialysis at or through a facility. The conference agreement specifies that, for non-ESRD patients, payments may be made to ESRD facilities, hospital outpatient departments or physicians for the vaccine and its administration. Similar payment arrangements are applicable for vaccines provided to ESRD patients not cared for by an ESRD facility.

The conference agreement gives the Secretary discretion in developing payment amounts. The conferees expect that the Secretary will give consideration to the need to avoid excessive program costs (e.g., by changing frequency guidelines for Hepatitis B testing for ESRD patients) and utilization patterns. The conferees are concerned about the potential extra billing liability of beneficiaries that might inhibit them from obtaining services, and therefore urge physicians to accept assignment. The agreement directs the Secretary to monitor the provision of the vaccine and its administration. The Secretary is further required to review any changes in technology which could potentially affect the amounts paid for services.



### **b. Cost-sharing**

#### *House bill*

The House bill would waive the applicable Part B deductible and coinsurance amounts.

#### *Senate amendment*

No provision.

#### *Conference agreement*

The conference agreement does not include the House provision.

### **c. Effective date**

#### *House bill*

The House bill specifies the effective date is for services furnished on or after July 1, 1984.

#### *Senate amendment*

The Senate amendment applies to vaccine administered on or after July 1, 1984.

#### *Conference agreement*

The conference agreement specifies an effective date of September 1, 1984.

## **12. Part B Payment for Services of Teaching Physicians (Section 2307)**

#### *Present law*

Present law sets forth conditions governing how Medicare should reimburse for patient care services performed by physicians in a teaching setting, including a formula for calculating the physician's customary charge.

### **a. Formula revision**

#### *House bill*

The House bill would revise the formula for calculating physicians' customary charges. As a result, customary charges cannot be less than 75 percent of the Medicare prevailing charges paid for services in the same locality as the teaching setting.

#### *Senate amendment*

Similar provision.

#### *Conference agreement*

The conference agreement follows the Senate amendment with a modification regarding calculation of customary charges. As a result, customary charges cannot be less than 85 percent of the Medicare prevailing charges in the same locality for the same service. The conferees also urge that the Secretary try to develop a simplified or expedited methodology by which teaching hospitals can



demonstrate that they satisfy the existing formula for establishing customary charges.

## **b. Alternative method**

### *House bill*

The House bill would provide an alternative method for determining reasonable charges. If all the "teaching physicians" at a particular teaching hospital agree to take assignment for all Medicare patients they serve in that teaching hospital, then the physicians can have their reasonable charges determined according to the normal Medicare reasonable charge methodology.

### *Senate amendment*

No provision.

### *Conference agreement*

The conference agreement follows the House provision with an amendment.

Effective October 1, 1984, if all the "teaching physicians" at a particular teaching hospital agree to take assignment for all medicare patients they serve in that hospital, then they can receive 90 percent of the medicare prevailing charges in the same locality.

The General Accounting Office shall conduct a study of the amounts billed for the services of teaching physicians and paid by carriers to determine whether such payments are only made when all of the conditions for payment under present law (Section 1842(b)(7)) are met.

The conference agreement also includes an amendment relating to the calculation of payments that are made to hospitals as compensation for indirect teaching costs. Regulations published in January specified that teaching hospitals that generally did not employ residents and interns could count them in calculating their indirect teaching costs only if they were employed by another organization which has a longstanding relationship with the hospital and which is the sole employer of substantially all of the interns and residents furnishing services at the hospital. The conferees believe these limitations are inappropriate because the indirect teaching costs which are being calculated result from the participation of the interns and residents in the hospitals' medical education program. Who employs them is immaterial. Therefore, the conference agreement provides that the Secretary, when calculating a hospital's indirect teaching costs, take account not **only** of the interns and residents it employs but also any other house staff members who participate in the hospitals teaching program but who are employed by another organization.

### 13. Limitation on Physician Fee Prevailing and Customary Charge Levels; Participating Physician Incentives (Section 2306)

#### a. Physician fees

##### *Present law*

(a) *Physician Fees.*—Medicare pays for physician services on the basis of Medicare-determined “reasonable charges.” Reasonable charges are the lesser of: (1) a physician’s billed charge; (2) the customary charge made by an individual physician for a specific service; or (3) the prevailing level of charges made by all physicians for services in a geographic area. The customary and prevailing charges are updated annually (on July 1) to reflect changes in physician charging practices. Increases in the prevailing charge levels are limited by an economic index, which reflects changes in the physicians’ practice costs and changes in general earnings levels.

##### *House bill*

No provision.

##### *Senate amendment*

The Senate amendment would freeze all customary and prevailing charges for the fee screen year beginning July 1, 1984. The amendment would continue the freeze for an additional year for the prevailing fees of physicians who are not “participating physicians”. No catch-up would be permitted for fees which were frozen.

##### *Conference agreement*

The conference agreement follows the Senate amendment with a modification. The provision adopted by the Conferees freezes Medicare customary and prevailing charges for all physicians services for a 15-month period beginning on July 1, 1984 and ending on September 30, 1985. Subsequent fee screen updates would occur on October 1 of future years. Because of the importance of the cooperation of physicians nationwide in the fee freeze, the Conferees intend that the Secretary make every effort to notify physicians, on a timely basis, concerning the requirements of this provision.

The provision establishes the concept of a “participating physician” contained in both the House and Senate bills. A participating physician is one who voluntarily enters into an agreement with the Secretary to prospectively accept assignment for all services furnished to all Medicare patients for a twelve-month period. Physicians would be given a specified period of time in which they could indicate their decision to participate for the twelve-month period beginning October 1, 1984. After this specified period of time elapses, only new physicians in an area or newly licensed physicians could sign participation agreements until the next designated period of time. These agreements would be similar to the “participating physician” agreements successfully used by many Blue Shield plans.

The provision contains several administrative incentives (contained in the Senate bill) to encourage physicians to voluntarily sign participation agreements. These include publication of directories, use of toll-free telephone lines to disseminate names of partici-

pating physicians and the use of direct lines for electronic receipt of claims. In addition, physicians have an incentive to become participating physicians because any normal increase in their actual billed charges during the 15-month period when Medicare's reasonable charges are frozen, will be reflected in updating their future customary charge screen updates.

Much of the success of the new "participating physician" program will depend on the involvement of the Medicare beneficiaries nationwide. In providing an increased amount of information to the beneficiary, the Conferees hope they will take this opportunity to become increasingly informed about the practice patterns of the physicians in their communities.

The current claim-by-claim assignment system would continue in its current form for physicians who choose not to sign participation agreements (i.e., non-participating physicians). To protect beneficiaries from increased charges during the 15-month period when Medicare payment levels are frozen, the legislation provides that increased charges to Medicare patients by non-participating physicians would not be recognized in their customary charge update in future years. Further, if non-participating physicians do not comply with the fee freeze and increase their actual charges billed to Medicare patients, they could be subject to civil money penalties or exclusion from the program for up to five years. However, in light of the efforts of many medical societies that have urged their members to voluntarily freeze their fees—efforts which the Conferees recognize and commend, the Conferees believe that this provision will work in concert with those efforts and that physicians who are complying with organized medicine's voluntary fee freeze would not be subject to the non-compliance provisions. The conference agreement provides the Secretary with authority to impose civil money penalties or assessments, exclusion for up to five years from the Medicare program, or both. The purpose of this authority is to protect Medicare beneficiaries from increased charges from physicians who are not participating physicians.

The conferees expect that the Secretary will exercise this authority vigorously but prudently, applying sanctions commensurate with the offense. The conference agreement provides the Secretary with necessary discretion in applying these penalties. The conferees expect that the Secretary will impose penalties on physicians who are serious violators of the program.

The Secretary will be expected to use discretion in judging whether the increased charges occurred before the physician could reasonably be expected to have known of the conditions this section imposes. Further, the Secretary would take into account other factors, such as whether a pattern of increased charges has occurred, the extent to which the patient faced increased costs as a result, and whether the amounts of the increases are significant, and so on.

In any program of this magnitude, all violations cannot be pursued. But the conferees expect the Secretary to monitor physician charges and take action in cases where willful violation is occurring so as to give public and the physician community certainty that the program is being enforced.



The conferees note that although the Secretary is provided with the ability to exclude a physician from Medicare for up to five years, it is the expectation that this step would be taken only in extreme circumstances and that the more usual enforcement will be through the civil money penalty.

Since the civil money penalty may be imposed in amounts of up to \$2,000 for each violation, the Secretary has a strong tool available to ensure enforcement. The conference agreement provides that in no circumstances will the exclusion penalty be imposed in the case of the sole physician serving a community or a physician providing essential specialized services that would otherwise not be available. Further, the impact on access to care for Medicare beneficiaries should be considered by the Secretary in making the determination of the penalty to be imposed in other cases as well.

The conferees expect the Secretary to consider whether there are enough other physicians in the area to serve the needs of Medicare patients. For example, rural communities may have few physicians. Some urban and rural areas are medically underserved. In some communities, barring a physician from Medicare might mean an effective loss of any physician to serve a person eligible for both Medicare and Medicaid.

In the cases where the Secretary determines exclusion from the program is appropriate, services provided by the physician would no longer qualify as a covered service under the Medicare program, and payment would no longer be made. The Secretary would be expected to take the appropriate steps to assure that the beneficiary was informed and protected.

The conference agreement gives the Secretary the authority to make restitution to a beneficiary out of amounts collected through civil penalties or assessments on the physician who provided him services. The Secretary would be expected to use this authority when the increased charges to the beneficiary were significant. It would be expected that restitution would not be made if the amounts in question were small or less than the administrative cost of making the restitution. The restitution in any case would not exceed either the excess amount the beneficiary paid or the amount collected from the offending physician.

In order to determine compliance of non-participating physicians with the fee freeze, the Secretary shall monitor the charges of individual non-participating physicians. The Secretary shall have the flexibility to perform the monitoring on a timely and cost-effective bases. The monitoring shall compare physician charges during periodic intervals following enactment (such as quarterly) with a base period of the April 1 to June 30, 1984 quarter (the quarter following the March 7, 1984 letter from the American Medical Association to all physicians urging a voluntary freezing of fees) and shall begin with charges on or after July 1, 1984.

In exercising her authority to enforce the price freeze, the conferees expect the Secretary would make use of the Office of the Inspector General in a similar manner as the current delegation of responsibility with respect to program sanctions and civil money penalties.

## b. Participating Physician Arrangements

### *Present law*

Physicians may decide, on a claim-by-claim basis, to accept assignment. That is, for each claim a physician may decide either (1) to accept the amount paid by Medicare (the reasonable charge) as payment in full (except for cost-sharing amounts) or, (2) to bill the patient for the entire bill, including any amount in excess of the Medicare reasonable charge. The patient is then responsible for paying the physician for the full amount of the bill and for submitting the claim to Medicare for payment of 80 percent of the Medicare reasonable charge.

### *House bill*

The House bill would require the Secretary to offer physicians annually an opportunity to voluntarily sign an agreement to accept assignment for all services furnished to all Medicare patients in the following year.

The House bill would require the Secretary to publish annually a list of physicians who have voluntarily agreed to accept assignment for all services furnished to all Medicare patients in the following year. It would require the Secretary to notify Medicare beneficiaries annually about the availability of the list.

### *Senate amendment*

The Senate amendment would include a similar provision with respect to the annual opportunity for physicians to sign an agreement except it includes suppliers, uses the term voluntary "participating physician or suppliers" arrangement and sets a date certain for implementation.

The Senate amendment would provide that for those physicians who have elected to become "participating" physicians, for the fee screen year beginning on July 1, 1985, prevailing fees will not be frozen.

The Senate amendment includes a provision, similar to that in the House bill, relating to publication of a list of physicians who have agreed to accept assignment and notification of beneficiaries of the availability of the list. The Senate amendment includes supplies and further requires the Secretary to make the list (directory) available in each district and branch office of the Social Security Administration, the offices of the carriers, and to senior citizens' organizations. The list would be available for purchase by the public.

The Senate amendment would provide additional incentives for participating physicians:

- requires carriers to maintain toll-free lines to provide enrollees with names of participating physicians;

- permits carriers to establish direct lines for electronic receipt and payment of claims;

- permits carriers to use either or both of the following payment arrangements for beneficiaries with approved medigap coverage or with group health insurance plans which serve as medigap policies:



"Piggyback billing" under which the participating physician or supplier submits one bill to the carrier. The carrier pays the physician or supplier the medicare determined reasonable charge and then sends the willing medigap insurers information on the amount paid. The medigap insurer would automatically pay the physician or supplier for the beneficiary's cost sharing liabilities.

"Payment to organizations" under which the participating physician or supplier submits one bill to the medigap insurer. The medigap insurer would pay the physician or supplier an amount which the physician or supplier accepts as payment in full, including cost-sharing liabilities. The medigap plan would then collect the reasonable charge from Medicare.

#### *Conference agreement*

The conference agreement establishes participation agreements for physicians and suppliers. The participation agreements would apply for 12-month periods beginning on October 1, 1984. As incentives to participate, the Conferees adopt the following incentives in the Senate bill: directories, toll-free telephone lines and direct lines for electronic receipt of claims. The conference agreement incorporates the use of the payment to organization method for participating physicians contained in the Senate bill in the definition of participating physician. The Conferees intend that the Secretary consider making certificates or other emblems available to physicians who sign participation agreements so that beneficiaries will have an easy means of identifying them.

### **c. Participating physician monitoring**

#### *House bill*

No provision.

#### *Senate amendment*

The Senate amendment would require the Secretary to monitor the proportion of physicians who do not become "participating physicians", the difference between actual and reasonable charges for those physicians, and any changes in per capita volume and mix of beneficiary services provided by those physicians. The Secretary would be required to report the results of such monitoring to the Congress on a semi-annual basis beginning January, 1985 and ending January, 1987. The final report would include recommendations for constraining part B growth so as to avoid an increased burden on program beneficiaries, and include an analysis of other payment methods for part B services.

The Senate amendment would specify that carrier payments from the part B trust fund are increased to the extent necessary to conduct the required monitoring.

#### *Conference agreement*

The conference agreement requires the Secretary to monitor charges of non-participating physicians for purposes of noncompliance with the fee freeze and application of sanctions as discussed above. The conference agreement also adopts a Senate provision with modifications regarding monitoring of changes in the per

capita (user or enrollee) volume (services and expenditures), and mix of services (such as changes in billings for various types of medical visits) for all physicians. The provision requires a report on these charges by July 1, 1985, including legislative recommendations of how to restrict growth in part B program costs without these costs being transferred to beneficiaries.

The conferees recognize that the provisions contained in this section will necessarily mean increases in costs for carriers. Among the activities that will entail new costs are implementation of the participating physician system, preparation of the directors and historical assignment rate lists, toll free telephone lines, direct lines for electronic billing, monitoring physician charges, and notifying physicians of these significant statutory changes. Further, these activities will require rapid and immediate action by the carriers. In order to assure that resources are promptly available to assure effective implementation of these provisions, the conference agreement provides the Secretary with authority to draw on the trust fund for immediate funds to carry out these activities. The agreement provides for the transfer of no less than \$8 million in FY 84 and \$15 million in FY 85.

#### **d. Information on physician assignment**

##### *House bill*

The House bill would require the Secretary to compile annually a list of physicians serving medicare beneficiaries including a list of assignment rates, by percentile intervals not to exceed quartiles, of individual physicians for the previous year.

The House bill also requires the Secretary to make available, in each district office of the Social Security Administration (SSA), the historical assignment rate lists for the local geographic areas served by that office. The bill also specifies that the historical assignment rate lists would have to be available by mail from each carrier. It would require annual notification to beneficiaries of the lists' availability.

##### *Senate amendment*

The Senate amendment includes a similar provision with respect to compilation of the list, except it includes suppliers and permits the Secretary to limit the list to those physicians and suppliers who accepted assignment in a certain percentage of cases.

The Senate amendment does not include a provision, comparable to that in the House bill, with respect to making the list available.

##### *Conference agreement*

The conference agreement follows the Senate amendment but excludes the requirement to publish volume of services and allows the Secretary to exclude low volume physicians and suppliers.

#### **14. Study of Medicare Part B Payments (Section 2309)**

##### *Present law*

Payments are made to physicians on the basis of reasonable charges for specific services.

## a. Study

### *House bill*

The House bill would require the Secretary to study and report on methods by which Medicare Part B payment amounts and program policies may be modified:

(i) To eliminate inequities in the relative amounts paid to physicians by type of service, locality, and specialty, with particular attention to any inequities between cognitive services and medical procedures.

(ii) To increase incentives for physicians and other suppliers under such part to accept assignment for Medicare services.

(iii) To provide incentives for physicians and other providers not to provide increased or otherwise excessive amounts of hospital, physician, and other health care services.

The report must also include a description of one or more national or regional fee schedules for payments which are consistent with the study carried out by the Secretary.

### *Senate amendment*

The Senate amendment would direct the Office of Technology Assessment, in consultation with appropriate physician organizations, to conduct a study to examine any imbalances in payment to physicians for their cognitive vs. their technical skills. It would require submission of a report to Congress by December 31, 1985 containing findings and specific recommendations.

The Senate amendment contains no provisions comparable to the other items of the House bill.

### *Conference agreement*

The conference agreement generally follows the House provision, with respect to the scope of the study, but places the entire study under the direction of OTA. With respect to item (ii) the conference agreement specifies that the study shall examine the influence of payment methodologies and payment levels on the utilization (i.e. volume and intensity) of services. In addition, the Conference agreement modifies the provision on fee schedules; the study is to include information on methodologies to be applied in the development of fee schedules and other payment mechanisms on either a national or regional basis and comments on whether such fee schedules or payment methodologies are advisable or feasible.

## b. Data base

### *House bill*

The House bill requires the Secretary to develop a centralized data base utilizing information from the Medicare carriers regarding the utilization of Part B services; the assignment rates of physicians and suppliers; actual, customary and prevailing charge distributions; and differences in charge distributions among different specialties and localities.

### *Senate amendment*

No provision.



*Conference agreement*

The conference agreement follows the House provision, with a modification directing the Secretary to provide the information in the data base to OTA.

**c. Effective date***House bill*

The House bill would require the study to be completed and the report submitted to Congress not later than June 30, 1985.

*Senate amendment*

The Senate amendment would require submission of the report prior to December 31, 1985.

*Conference agreement*

The conference amendment follows the Senate amendment.

**15. Pacemaker Review and Reform (Section 2304)***Present law*

The costs of inpatient hospital services with respect to the implantation of pacemakers, including the costs of the device, are subject to the new diagnosis-related group (DRG) prospective payment system. However, the costs of physicians' services for implantation and post-implantation monitoring of the devices are reimbursed under Part B. Post-implantation monitoring includes transtelephonic monitoring for which frequency guidelines have been established by the Secretary.

**a. Guideline revision***House bill*

The House bill would require the Secretary to revise the current guidelines on the frequency of transtelephonic monitoring.

*Senate amendment*

The Senate amendment includes a similar provision.

*Conference agreement*

The conference agreement follows the House bill.

**b. Frequency guidelines***House bill*

The House bill would provide that, if the Secretary fails to revise the guidelines by October 1, 1984, a specified frequency schedule would go into effect with respect to single-chamber cardiac pacemakers powered by lithium batteries. The House bill would provide that payment would not be made for monitoring which is more frequent than: (1) weekly during the first month after implantation, (2) once every two months during the period representing 80 percent of the estimated life of the device, and (3) monthly thereafter. Exceptions could be made based on special medical factors.

*Senate amendment*

The Senate amendment would require the issuance of revisions by April 1, 1984. No statutory schedule is set forth.

*Conference agreement*

The conference agreement follows the House bill with an amendment which provides that the frequency guidelines established by law will expire upon publication of the revised guidelines. The conferees expect that the revised guidelines will be published promptly. They further expect that the revised frequency guidelines will provide for exceptions where medically appropriate.

**c. Payment review***House bill*

The House bill would require the Secretary to review and report to the Congress on the appropriateness of the current Part B payment for physician's services associated with implantation or replacement of pacemakers and pacemaker leads. Such review would take into account the time and difficulty of the procedures compared to those when such rates were first established and take into consideration a reduction of such recognized rates by 20 percent. The House bill would require completion of the review by October 1, 1984.

*Senate amendment*

The Senate amendment includes a similar provision except that it would: (1) also require review of reimbursement for inpatient hospital services, and (2) not require the Secretary to take into consideration a reduction in recognized rates by 20 percent. The review and report would be due by April 1, 1984.

*Conference agreement*

The conference agreement follows the House bill with an amendment. The amendment requires a review of payments for implantation or replacement of pacemakers under both Parts A and B of Medicare, with the review of Part A payments conducted by the Prospective Payment Assessment Commission. Both studies must be submitted to Congress by March 1, 1985.

The conferees note that improvements in pacemaker implantation, reductions in the time required for such procedure, and changes in the difficulty and costs of such procedures have occurred over the past decade. Therefore, while the agreement eliminates the directive that the Secretary take into consideration a 20 percent reduction in recognized rates, the conferees expect the Secretary to consider whether some reduction in fees may be appropriate.

**d. Registry***House bill*

The House bill requires the Secretary, through the Food and Drug Administration, to provide a registry of all cardiac pacemaker devices and leads for which payment was made under Medicare.



The registry would include the manufacturer, model, serial number, and manufacturer's price, the name of the recipient, the date and geographic location of the implantation or removal, and the name of the physician, hospital or other provider. The registry would be required to include any express or implied warranties associated with the device and any other information which the Secretary deemed appropriate. The Secretary is prohibited from identifying any recipient of a pacemaker by name.

#### *Senate amendment*

The Senate amendment includes a similar provision. The registry information is substantially the same as that required by the House bill, except manufacturer price information is not specified. Submission of the information by the manufacturer would be a condition for any Medicare payments with respect to any devices or leads produced by that manufacturer.

#### *Conference agreement*

The conference agreement follows the House bill with an amendment. Inclusion of manufacturer price information in the registry is not required. Further, the amendment specifies that providers' and physicians' compliance with information requirements is a condition for Medicare payments with respect to implantation or removal of devices or leads.

The agreement further specifies that the purposes of the registry include tracing the performance of pacemaker devices and leads.

### **e. Return of device or lead**

#### *House bill*

No provision.

#### *Senate amendment*

The Senate amendment would authorize the Secretary to require, as a condition of payment, that a provider furnish to the manufacturer information with respect to all patients bearing a device or lead for which Medicare payment was made or requested. The Secretary could also require that any device or lead removed from any such patient be returned to the manufacturer. Fiscal intermediaries could, pursuant to regulations, deny payment for replacements if the device or lead was not returned; beneficiaries could not be charged for replacements in such cases.

#### *Conference agreement*

The conference agreement follows the Senate amendment with a modification deleting the provision authorizing the Secretary to require that a provider furnish the manufacturer with information.

### **f. Testing**

#### *House bill*

The House bill would provide that in any case where the Secretary had reason to believe that replacement of a pacemaker was related to its malfunction, the Secretary would be permitted to re-

quire the testing of such device by the FDA or that FDA personnel be present at testing by the manufacturer.

*Senate amendment*

The Senate amendment includes a similar provision. In addition, it would authorize the Secretary to require the manufacturer to test or analyze each returned cardiac pacemaker device or lead and provide the test results to the provider who returned it to the manufacturer, together with information as to any warranty coverage.

*Conference agreement*

The conference agreement follows the Senate amendment, except that it strikes the provision permitting the Secretary to require the FDA to do the testing.

**g. Manufacturer reports**

*House bill*

No provision.

*Senate amendment*

The Senate amendment would authorize the Secretary to require any manufacturer to provide to the FDA: (1) a written report with respect to any adverse reaction and any defect (within 10 days of the date on which the manufacturer is notified) and (2) an annual report summarizing clinical experiences with devices and leads including information on all removals, deaths, adverse reactions, device or lead defects, and the results of tests performed on all returned devices and leads.

*Conference agreement*

The conference agreement does not include the Senate amendment. The conferees understand that the Secretary is developing Mandatory Device Experience Reporting regulations, pursuant to section 519 of the Federal Food, Drug, and Cosmetic Act, which would establish requirements comparable to those set forth in the Senate amendment. The conferees did not wish to duplicate the provisions of those regulations or establish requirements inconsistent with them. The conferees expect the regulations to be issued soon and expect that they will accomplish the purposes of the Senate amendment.

**h. Bonds**

*House bill*

No provision.

*Senate amendment*

The Senate amendment would require manufacturers to post a bond or provide other assurances as the Secretary deems appropriate to ensure compliance.

*Conference agreement*

The conference agreement does not include the Senate amendment.

**16. Limitation on Certain Foot-Care Services (Section 2325)***Present law*

Routine foot care is not covered by the Medicare program. However, Medicare does allow reimbursement to physicians for debridement of mycotic toenails (i.e., the care of toenails with a fungal infection).

*House bill*

The House bill would require the Secretary to deny coverage under the Medicare program for debridement of mycotic toenails if performed more frequently than once every 60 days. Exceptions would be authorized if medical necessity were documented by the billing physician. The provision would be effective upon enactment.

*Senate amendment*

Similar provision. The provision would be effective with respect to services performed on or after enactment.

*Conference agreement*

The conference agreement follows the House provision, with the Senate effective date.

**17. Presidential Appointment of and Pay Level for the Administrator of the Health Care Financing Administration (Section 2332)***Present law*

The Administrator of the Health Care Financing Administration (HCFA) is in the Senior Executive Service and is appointed by the Secretary of Health and Human Services.

*House bill*

The House bill would provide for the appointment of the Administrator of HCFA by the President with the advice and consent of the Senate. It would increase the position and pay of the Administrator to level IV of the Executive Schedule.

*Senate amendment*

Same as House bill.

**18. Permitting Limited Provider Representation on Peer Review Organizations (Section 2334)****a. Provider representation***Present law*

The Secretary is prohibited from contracting with an entity which is, or is affiliated with (through management, ownership or common control), a health care facility. The Secretary, by regula-

tion, has specified that the governing body of a peer review organization may not have a member who is a member, officer, or managing employee of a health care facility.

*House bill*

The House bill would provide for limited representation of providers on PRO's. For PRO's with a governing body of 15 or fewer members, one member could be a governing body member, officer, or managing employee of a health care facility. The number would be increased to two in the case of a PRO with more than 15 members.

*Senate amendment*

Similar provision.

*Conference agreement*

The conference agreement follows the Senate amendment with a modification which allows up to 20% of the members of a PRO governing body to be affiliated with providers.

**b. Payer organizations**

*Present law*

Before October 1, 1984, entities which are payer organizations are barred from being a PRO. By regulation, this has been interpreted to bar organizations whose board members include a representative of a self-insured employer.

*House bill*

No provision.

*Senate amendment*

The Senate amendment would permit entities whose board members include a representative of a self-insured employer to qualify as a PRO.

*Conference agreement*

The conference agreement follows the Senate amendment with a modification. An organization which has no more than one member affiliated with a health maintenance organization would not be classified as a payer organization and would therefore be permitted to qualify as a PRO.

**19. Access to Home Health Services (Section 2336)**

**a. Disqualified physicians**

*Present law*

A physician must certify the patient's need for services and establish a plan of care before a beneficiary can qualify for home health services. A physician may not perform these functions for patients of any agency in which the physician has a significant ownership interest or a significant financial or contractual relationship.



*House bill*

The House bill would permit a physician who has a financial interest in an agency which is a sole community home health agency, as determined by the Secretary, to carry out certification and plan of care functions for patients served by the agency.

The amendment would require appropriate changes in regulations within 90 days of enactment.

*Senate amendment*

The Senate amendment includes a similar provision except that its application would be limited to an agency which is the only home health agency in a county. The provision would be effective upon enactment.

*Conference agreement*

The conference agreement follows the House bill with a modification. The Secretary would be required, not later than 90 days after enactment, to revise regulations to reflect the provision. The conferees intend that the Secretary, in determining which entities meet the definition of sole community home health agencies, shall take into account the number of persons residing in the county and the size of the county. The conferees are concerned that if the determinations are made only on the basis of countyline boundaries, HHAs in counties encompassing large geographic areas or sizeable populations might not be appropriately designated.

**b. Uncompensated officers or directors***Present law*

Regulations specifying physicians who are disqualified from performing certification and plan of care functions for patients of a home health agency include physicians who are uncompensated officers or directors.

*House bill*

The House bill would delete from the list of disqualified physicians uncompensated officers or directors of agencies.

The provision would apply to certifications and plans of care made on or after date of enactment.

*Senate amendment*

The Senate amendment includes a similar provision which would be effective on enactment.

*Conference agreement*

The conference agreement follows the House bill.



## **20. Repeal of Special Tuberculosis Treatment Requirements and Requirement of Accreditation of Psychiatric Hospitals (Section 2395)**

### **a. Tuberculosis treatment requirements**

#### *Present law*

The law contains a number of special provisions originally intended to assure that institutional services provided to Medicare and Medicaid patients suffering from tuberculosis are not custodial in nature and can reasonably be expected to improve the patient's condition or render the condition non-communicable.

#### *House bill*

The House bill would repeal the special conditions and requirements. It would also eliminate the special provider category for tuberculosis hospitals.

#### *Senate amendment*

Similar provision.

#### *Conference agreement*

The conference agreement follows the Senate amendment.

### **b. Psychiatric hospital accreditation**

#### *Present law*

The law requires psychiatric hospitals, and psychiatric units of hospitals, to be accredited by the Joint Commission on the Accreditation of Hospitals (JCAH) in order to participate in Medicare and Medicaid.

#### *House bill*

The House bill would repeal the requirement that psychiatric hospitals and units be accredited by JCAH, and permit the provider to participate on the basis of accreditation by organizations approved by the Secretary. [See item 26]

#### *Senate amendment*

Similar provision.

#### *Conference agreement*

The conference agreement follows the Senate amendment.

## **21. Indirect Payment of Supplementary Medical Insurance Benefits (Section 2339)**

#### *Present law*

Part B payments generally may not be made to anyone other than a beneficiary or an entity providing services.

*House bill*

The House bill would permit Part B payments to be made to a health benefits plan, if the beneficiary agrees and if the physician or other supplier accepts the plan's payment as payment in full.

*Senate amendment*

Similar provision.

*Conference agreement*

The conference agreement follows the House bill but the Conferees would like to clarify that the purpose of this provision is to enable this indirect payment procedure to be available to group, as well as non-group, employments and non-employment health benefit plans such as employers, unions, insurance companies, and other organizations.

**22. Including Podiatrists in Definition of "Physician" for Outpatient Physical Therapy Services and Including Podiatrists and Dentists in the Definition of "Physician" for Outpatient Ambulatory Surgery (Section 2341.)**

**a. Definition of "Physician" for outpatient physical therapy services**

*Present law*

Outpatient physical therapy services are covered only if the patient is under the care of a physician. Podiatrists are not included within the definition of a physician for this purpose.

*House bill*

The House bill defines a podiatrist (when acting within the scope of his practice) as a physician for the purposes of establishing a plan for the outpatient physical therapy requirement.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

**b. Definition of "Physician" for outpatient ambulatory service**

*Present law*

Podiatrists and dentists are not included within the definition of "physician" for purposes of outpatient ambulatory surgery in a physician's office.

*House bill*

The House bill includes dentists and podiatrists within the definition of physician for purposes of outpatient ambulatory surgery in a physician's office.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House provision.

### **23. Establishment by Physical Therapists of Plans for Physical Therapy (Section 2342.)**

*Present law*

Medicare payment for outpatient physical therapy services furnished to a beneficiary may be made only if a plan for furnishing such services is established and periodically reviewed by a physician.

*House bill*

The House bill would allow either the physical therapist or the physician to establish the plan of care. The physician would still be required to review periodically all plans of care. The provision would apply with respect to plans of care established on or after the date of enactment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

### **24. Access to Records of Subcontractors**

*Present law*

Any contract valued at \$10,000 or more between a Medicare provider and a subcontractor must permit access to the records of the subcontractor by the Secretary or the Comptroller General.

*House bill*

The House bill increases the minimum amount to \$50,000 with respect to contracts with subcontractors entered into on or after date of enactment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House Provision.

### **25. Medicare Recovery Against Certain Third Parties (Section 2344)**

*Present law*

Medicare may limit benefit payments for services for which other third party insurance programs (e.g. worker's compensation, auto or liability insurance, and employer health plans) may ultimately be liable. However, the law does not make it explicit that the Secretary has the right of subrogation, or the right to become a party to claims against other liable parties or to recover directly from such parties.

*House bill*

The House bill would establish the statutory right of Medicare to: (1) bring an action directly against certain third parties, if the beneficiary does not do so; (2) bring an action against any party (except the beneficiary) who has already been paid or, (3) join or intervene in an action against a third party.

*Senate amendment*

The Senate amendment includes a similar provision, except the beneficiary would not specifically be exempt from suit where benefits had already been paid by the third party.

*Conference agreement*

The conference agreement follows the Senate amendment. The conferees note that the provision does not alter any existing authority nor create any new authority with respect to recoveries from beneficiaries. The provision would be effective with respect to items and services furnished on or after the date of enactment.

## 26. Use of Accrediting Organizations for Certain Entities Furnishing Services (Section 2346)

*Present law*

The Secretary has authority to rely on certain accrediting organizations in determining whether hospitals, skilled nursing facilities, home health agencies, ambulatory surgical centers, and hospice programs meet Medicare requirements.

*House bill*

The House bill extends the Secretary's authority to rely on such organizations in determining whether rural health clinics, laboratories, clinics, rehabilitation agencies, including outpatient rehabilitation facilities, psychiatric hospitals, and public health agencies meet Medicare requirements (and clarifies the Secretary's authority with respect to ambulatory surgical centers).

*Senate amendment*

The Senate amendment includes a similar provision except that it would not apply to psychiatric hospitals. [See Item 20.]

*Conference agreement*

The conference agreement follows the House bill. The conferees intend that the standards of an accrediting organization chosen must be at least equivalent to those of the Secretary and it must have a satisfactory record of application of such standards. In deciding which, if any, private accrediting entities will be recognized for the purpose of certifying health care facilities for participation in the Medicare program, the conferees expect that the Secretary will examine the standards applied by such entities to assure that the adoption of such standards will not adversely affect competition in the provision of Medicare health services. Recognition by the Secretary of an accreditation program with unduly restrictive standards would preclude qualified persons from delivering serv-



ices, thereby increasing Medicare costs, in contravention of Congress' purpose in adopting this provision.

## **27. Confidentiality of Accreditation Surveys (Section 2345)**

### *Present law*

Current law contains certain disclosure safeguards relating to survey information used by the Secretary in connection with the hospital certification process under Medicare. However, the law only specifically refers to surveys conducted by the Joint Commission on the Accreditation of Hospitals (JCAH).

### *House bill*

The House bill extends the disclosure protections given JCAH survey information to similar survey information provided to the Secretary by the American Osteopathic Association or other national accreditation organizations.

### *Senate amendment*

Same as House bill.

## **28. Thirty Day Coverage for Services Furnished by a Home Health Agency or Hospice Whose Agreement Has Been Terminated (Section 2348)**

### *Present law*

If the medicare participation agreement of a home health agency or hospice is terminated, the Secretary is required to continue to pay for services provided to a beneficiary until the end of the calendar year in which the termination took place. This requirement is only applicable to services provided under an individual plan of care established prior to the termination of the agency agreement.

### *House bill*

The House bill would change, from the end of the calendar year to 30 days after termination, the ending of coverage for services provided under a plan of care established prior to the termination date of the participation agreement. The provision would apply to terminations whose effective date falls 60 days after the date of enactment.

### *Senate amendment*

The Senate amendment includes a similar provision which would apply to terminations issued on or after the date of enactment.

### *Conference agreement*

The conference agreement follows the Senate amendment.



## **29. Termination of Agreements With Institutions and Entities Where Owners or Certain Other Individuals Have Been Convicted of Certain Offenses (Section 2333)**

### *Present law*

The Secretary may bar from participation in Medicare (and may direct State agencies to bar from Medicaid) a person convicted of program-related criminal offenses. The Secretary may refuse either to enter into or renew a provider agreement with an entity in which ownership or control is held by a person so convicted.

### *House bill*

The House bill would extend the Secretary's authority by authorizing the Secretary to terminate agreements with any entity in which ownership or controlling interest is held by a person convicted of a program-related criminal offense, or an entity in which an officer, director, agent or managing employee was convicted of such a criminal offense.

### *Senate amendment*

Similar provision. Additionally, the Senate amendment would: (a) require the Secretary to notify State Medicaid agencies and authorizes the Secretary to require such agencies to bar the entity from participation in the program; and (b) require the Secretary to notify the appropriate State licensing or certification agency and request that appropriate investigations be made and that the State agency keep the Secretary and Inspector General informed of any actions taken.

### *Conference agreement*

The conference agreement follows the Senate amendment. The provision would be effective on the date of enactment and shall apply to convictions of persons occurring after such date.

## **30. Elimination of Health Insurance Benefits Advisory Council (Section 2349)**

### *Present law*

The Social Security Act provides for a 19 member panel of health experts (the Health Insurance Benefits Advisory Council or HIBAC) appointed by the Secretary to advise on matters of general policy with respect to the Medicare and Medicaid programs.

### *House bill*

The House bill would repeal the provision.

### *Senate amendment*

Same as House bill.

### 31. Health Maintenance Organizations (Section 2350)

#### a. Enrollment periods

##### *Present law*

Health maintenance organizations (HMO's) and competitive medical plans (CMP's) are required to have an annual open enrollment period of at least 30 days during which time they must accept Medicare beneficiaries up to the limits of their capacity. If there is more than one HMO in an area, there is no current requirement that the open enrollment periods be coordinated.

##### *House bill*

The House bill would require the Secretary (after consultation with such organizations) to designate a single 30-day period each year in which all of the HMO's in an area participating in Medicare must have an open enrollment period. It would permit HMO's to conduct open enrollment at other times during the year.

##### *Senate amendment*

Same as House bill.

##### *Conference agreement*

The conferees recognize that an HMO will enroll non-medicare persons at other times during the year. The conferees expect the Secretary to take whatever steps are necessary to assure that an appropriate portion of capacity is retained to enroll medicare beneficiaries in the HMO, particularly during the coordinated open enrollment period.

#### b. Benefit stabilization fund

##### *Present law*

An HMO with a risk-sharing contract is required to provide enrollees with either additional health service benefits or reductions in their premiums or other charges, if the adjusted community rate (ACR) for its Medicare enrollees is less than the Medicare payments it receives for those enrollees.

##### *House bill*

The House bill would authorize an HMO, with the Secretary's approval, to place a portion of the funds required to be used for additional benefits in a benefit stabilization fund. The fund would be used by the HMO to stabilize additional benefits from year to year.

##### *Senate amendment*

No provision.

##### *Conference agreement*

The conference agreement follows the House bill with an amendment. The bill would allow an HMO, with the Secretary's approval, to request that the Secretary withhold a part of the value of additional benefits for use in subsequent contract periods. These funds would be used to avoid significant premium changes or major fluc-

tuations in benefits to beneficiaries from year to year. They are not to be used to offset losses that the HMO may sustain pursuant to its risk-based contract.

While it would be the HMO's option to request withholding, the amounts withheld would be approved and held by the Secretary. The Secretary would establish limits on the amounts withheld to assure that they do not exceed the minimum levels necessary for reasonable benefit stabilization, taking into account the requirements of individual plans. In any case, an HMO could only use such a fund for a four-year period.

The bill limits to four years the time during which the Secretary may allow an HMO to establish a fund for this purpose. The conferees are interested in having the Secretary review the use of these funds so a determination can be made as to whether or not the continuation of these stabilization funds will be in the best interests of the program and the beneficiaries. The conferees do not believe the results of the one demonstration of this concept is sufficient to warrant a permanent change in the law.

### **c. Direct reimbursement**

#### *Present law*

Medicare restricts to hospitals (in the case of risk-sharing HMO's) and to hospitals and nursing homes (in the case of cost-based HMO's) the providers which the program will reimburse directly for services provided to an HMO's Medicare enrollees.

#### *House bill*

The House bill would expand the types of providers to whom Medicare can make payment directly for HMO services.

#### *Senate amendment*

No provision.

#### *Conference agreement*

The conference agreement follows the House bill with an amendment limiting application of the provision to hospitals and skilled nursing facilities.

### **32. Deadline for Report on Including Payment for Physicians' Services to Hospital Inpatients in DRG Payment Amounts (Section 2317)**

#### *Present law*

The Secretary is required to report to the Congress on the advisability and feasibility of making payments for physician services furnished to hospital inpatients based on a diagnosis-related group system and to make legislative recommendations. The report is to be part of the report made to the Congress during 1985.

#### *House bill*

The House bill would require the Secretary to report to Congress not later than July 1, 1985.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

### **33. Flexible Sanctions for Noncompliance With Requirements for End-Stage Renal Disease Facilities (Section 2352)**

*Present law*

End-stage renal disease (ESRD) facilities that are not in complete compliance with Medicare program requirements are subject to de-certification.

*House bill*

The House bill would authorize the Secretary to apply intermediate sanctions to such facilities, such as denial of reimbursement for some or all patients admitted after the facility is notified of its non-compliance, or graduated reduction in reimbursement for all patients.

*Senate amendment*

Similar provision.

*Conference agreement*

The conference agreement follows the Senate amendment. The provision would be effective with respect to determinations made by the Secretary on or after the date of enactment.

### **34. Repeal of Requirement for End-Stage Renal Disease Networks**

*Present law*

The Secretary is required to establish network organizations to assist in the administration of the End Stage Renal Disease Program. Such organizations are directed to perform a variety of functions, including planning, setting goals and objectives, monitoring patient care, and compiling data on ESRD patients and services that are useful to the Department in administering and evaluating the program.

*House bill*

The House bill would eliminate the statutory requirement for networks, as well as the various statutory responsibilities imposed on them. Under the House bill, the Secretary would continue to have authority to establish a national end-stage renal disease medical information system.

The provision would be effective on a date established and published by the Secretary, but not earlier than July 1, 1984, on which date the Secretary has in operation an alternative means of data collection to that currently performed by renal disease networks.

*Senate amendment*

No provision.



*Conference agreement*

The conference agreement does not include the House provision. The conferees intend that the Secretary will give additional direction to the networks to facilitate their ability to perform the requisite functions. The conferees are particularly concerned that the data collection capability should be strengthened and note that the collection and maintenance of data is vital to efficient and effective program administration. The conferees further note their concern that the annual ESRD report be submitted to the Congress on a timely basis.

The conferees intend that the Secretary give consideration to consolidating existing network areas. They also intend that the Secretary examine the composition of such entities with a view toward reducing the predominance of facility representation and increasing the representation of beneficiary interests.

### **35. Definition of Bona Fide Emergency Services for Purposes of Limitations on Payment for Hospital Outpatient Services (Section 2318)**

*Present law*

The Secretary is required to place reasonable limits on hospital costs and physician charges for outpatient services; bona fide emergency services provided in an emergency room are specifically exempted by statute from the limits.

*House bill*

The House bill would provide a statutory definition of "bona fide emergency services" which includes services provided in a hospital emergency room after the onset of a medical condition manifesting itself by symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected, by a prudent lay person possessing an average knowledge of health and medicine, to result in: (a) placing the patient's health in jeopardy; (b) serious impairment to bodily functions; (c) serious dysfunction of any bodily organ or part; or (d) development or continuance of severe pain. The provision would be effective on enactment.

*Senate amendment*

The Senate amendment includes a similar provision except that the definition includes services provided in a hospital emergency room after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in: (a) placing the patient's health in serious jeopardy; (b) serious impairment to bodily functions; or (c) serious dysfunction of any bodily organ or part. The provision would be effective with respect to services furnished on or after date of enactment.

*Conference agreement*

The conference agreement follows the Senate amendment.



### 36. Part B Premium (Section 2302)

#### *Present law*

The Secretary is required to calculate and announce each September the amount of the monthly premium that will be charged in the following calendar year for people enrolled in the Supplementary Medical Insurance (Part B) portion of the Medicare program. A temporary provision of law requires that for 1984 and 1985 the premium amount be calculated so as to produce premium income equal to 25 percent of program costs for enrollees aged 65 and over.

Beginning with 1986, the premium calculation will revert to an earlier method under which the premium amount is the lower of: (1) an amount sufficient to cover one-half of program costs for the aged; or (2) the current premium amount increased by the percentage by which cash benefits were most recently increased under the cost-of-living adjustment (COLA) provisions of the Social Security program.

#### *House bill*

No provision.

#### *Senate amendment*

The Senate amendment would make permanent the existing temporary provision which fixes the proportion of the Part B Medicare costs financed by enrollees at 25 percent of program costs. Should no Social Security cost-of-living adjustment take place, the monthly premium would not be increased for that year.

In the case of an individual who has his or her Part B premium deducted from his or her Social Security check, if the cost-of-living adjustment is less than the amount of the increase in the premium, the premium increase would be reduced so as to avoid a reduction in the individuals Social Security check. In certain cases, the monthly premium would not increase for that individual for that year.

	Estimated monthly premium	
	Current law	Senate amendment
1986.....	\$17.70	\$19.10
1987.....	18.60	21.30

#### *Conference agreement*

The conference agreement follows the Senate amendment with a modification limiting the extension of the provision to two calendar years, i.e., 1986 and 1987.

### 37. One month delay in medicare entitlement

#### *Present law*

Eligibility for Medicare begins on the first day of the month in which an individual attains age 65.

#### *House bill*

No provision.

#### *Senate amendment*

The Senate amendment would delay eligibility for Parts A and B of Medicare until the first day of the month following the month the individual attains age 65.

#### *Conference agreement*

The conference agreement does not include the Senate amendment.

### 38. Revaluation of Assets Acquired by Hospitals (Section 2314)

#### *Present law*

Medicare currently reimburses hospitals and other providers for their capital-related costs, including depreciation costs and interest. Investor-owned hospitals also receive a return on equity. When hospitals and other providers are sold, their assets are often revalued, thereby increasing reimbursement for these capital-related costs.

#### *House bill*

No provision.

#### *Senate amendment*

The Senate amendment would limit the increase in capital-related cost reimbursement to a new owner that would result from the revaluation of hospital assets acquired in fiscal year 1985 and thereafter. The capital-related cost of the new owner would be based on the acquisition cost of the asset as entered on the books of the prior owner less any depreciation taken on the asset by the prior owner. In addition, the new owner's capital-related costs must be determined using the same useful life and method of depreciation as used by the prior owner for reimbursement under the Medicare program.

#### *Conference agreement*

The Conference agreement follows the Senate amendment with a modification specifying that capital-related costs to the new owner shall be based on the lesser of: (a) historical cost (the cost to the original owner), or (b) the purchase price of the asset.

The Secretary would be required to continue recapture of depreciation as under current reimbursement policy.

The Conferees intend that the Secretary, in implementing this provision will establish an appropriate policy with respect to useful life, the method of depreciation, and the treatment of sale and leaseback arrangements.

The conferees are concerned that Medicare has been paying for the same capital assets more than once. Thus, the provision is intended to limit the revaluation of an asset to the cost of acquisition to the individual or entity who is the owner, for medicare purposes, at the time of enactment of the legislation. Acquisition costs may include capital improvements or other costs which medicare recognizes as increasing the basis of the asset. The purchaser's revaluation would be limited to his own acquisition cost, as recognized by the Secretary, if that cost was less than the previous owner's acquisition cost.

The conferees note that under present law, capital-related costs which are excluded from the prospective payment system and which continue to be reimbursed on a reasonable cost basis also include leases and rentals for the use of depreciable assets. The conferees recognize that the limitation on the revaluation of assets acquired by hospitals or nursing homes could be circumvented by certain sale/lease-back or sale-rental agreements. The conferees expect that the Secretary will determine the reasonableness of any lease or rental costs involving a depreciable asset which has undergone a change in ownership taking into account the limitation on the revaluation of assets.

The conference agreement applies to both hospitals and skilled nursing facilities participating under Medicare.

The conference agreement excludes from the calculation of allowable capital costs those expenses (such as lawyers' fees and feasibility studies) related to acquisitions and mergers.

The conference agreement applies to capital-related costs of capital expenditures obligated on or after the date of enactment.

The conference agreement also limits State Medicaid reimbursement for the costs associated with the sale or transfer of a hospital or nursing home. States would be required to assure the Secretary that the methodologies used to establish rates paid to hospitals, SNF's, or ICF's can reasonably be expected not to increase those rates more than they would increase under Medicare policy as the result of a change of ownership of a facility. The State must demonstrate generally that the statutory standard will be met in the aggregate, although it is not the intention of the conferees that States supply a detailed accounting of how that aggregate is achieved. In evaluating the State's assurances, the Secretary may require the State to demonstrate the application of its methodology in a limited number of instances.

The conferees note that, under current law, States have broad discretion in designing reimbursement methods and standards for hospital, SNF, and ICF services, and have used that discretion to implement a wide variety of payment methodologies. The conferees do not intend to limit that discretion, and anticipate that, in many States, current or planned methodologies would not be affected. States that choose to use the Medicare capital payment methodologies may continue to do so. States which have chosen alternative methods, such as an approach under which payment is made for the fair rental value of the facility, would not be discouraged from doing so.

### **39. Repeal of Preadmission Diagnostic Testing Provision (Section 2305)**

#### *Present law*

The Omnibus Reconciliation Act of 1980 authorized 100 percent Part B reimbursement on a reasonable cost or charge basis for preadmission diagnostic testing, either in a hospital's outpatient department or in a physician's office, within seven days prior to a hospital admission.

The final regulation implementing 100 percent reimbursement for preadmission testing was not published.

#### *House bill*

No provision.

#### *Senate amendment*

The Senate amendment would repeal the provision. It would clarify that repeal shall not be construed as prohibiting program payments (subject to cost-sharing) for preadmission diagnostic testing performed in a physician's office to the extent such testing is otherwise reimbursable. The section would be effective with respect to services performed after the date of enactment.

#### *Conference agreement*

The conference agreement follows the Senate amendment.

### **40. Rounding of Part B Payments**

#### *Present law*

Medicare carriers compute charge-based payments to the nearest cent.

#### *House bill*

No provision.

#### *Senate amendment*

The Senate amendment would require Medicare Part B charge-based payments on claims that are not whole dollar amounts to be rounded to the next lower dollar.

#### *Conference agreement*

The conference agreement does not include the Senate amendment.

### **41. Agreements for Medicare Claims Processing (Section 232b)**

#### **a. Provider nomination**

#### *Present law*

Medicare contracts with intermediaries and carriers to perform the day-to-day operational work of the program including reviewing claims and making program payments. Providers are permitted to nominate an intermediary.



The Secretary is permitted to assign or reassign any provider if the Secretary determines that such assignment or reassignment would result in more effective administration of the program.

*House bill*

No provision.

*Senate amendment*

The Senate amendment would increase the Secretary's discretion in entering into agreements for Medicare claims processing by eliminating the right of providers of services to nominate intermediaries.

*Conference agreement*

The conference agreement follows the Senate amendment with a modification. The conference agreement would allow the waiver of provider nomination requirements when a contract is competitively bid and for the duration of the competitively bid contract. Further, the agreement would reduce the number of designated regional intermediaries for home health agencies to no more than 10, to be completed within 3 years.

The conferees believe that the Secretary has sufficient discretion under existing authority to assign or reassign any provider of services to any agency or organization which has entered into an agreement with the Secretary if the Secretary determines, after applying the standards, criteria and procedures set forth in the statute, that such assignment or reassignment would result in the more effective and efficient administration of the program.

The conferees understand that reassigning a provider is a significant administrative burden on the provider and therefore anticipate that this authority would be used only when it is clear that changing to another intermediary would result in the more effective and efficient administration of the program.

The General Accounting Office would be required to study and report on the appropriateness of removing the provider nomination requirements in the statute.

Public Law 96-499 required the designation of regional intermediaries for home health agencies. At that time, the conferees intended that only a few intermediaries be designated as regional intermediaries in order to provide for more consistent and effective management of the home health program. However, the Secretary has by regulation established 47 regional intermediaries. The conferees believe that in order to more effectively manage the home health benefit under the medicare program that the number of regional intermediaries be reduced to no more than 10. The conferees anticipate that the number of designated intermediaries would be reduced as quickly as possible but in no case more than three years from the date of enactment.

**b. Cost reimbursement**

*Present law*

Intermediaries and carriers are reimbursed for these activities on the basis of costs that are necessary and proper.



*House bill*

No provision.

*Senate amendment*

The Senate amendment would permit the Secretary to enter into various kinds of agreements, not solely those based on cost.

*Conference agreement*

The Conference agreement follows the Senate amendment with a modification. The Conference agreement would provide that in determining a carrier's or intermediary's necessary and proper cost of administration, the Secretary shall, with respect to each contract, take into account the amount that is reasonable and adequate to meet the costs which must be incurred by an efficiently and economically operated organization in carrying out the terms of its agreement.

The conferees note that the medicare claims processing costs on a per claim basis have fallen considerably over the last years. However, there still appear to be significant disparities between the cost of different intermediaries and carriers (even when adjusted for factors such as difficulty of processing certain claims) which are unexplained. There seems to be little correlation between price per claim and performance as measured by HCFA standards. The conferees are interested in learning:

- (1) Whether contractor costs are excessive;
- (2) Whether the Secretary's standards for evaluating contractor costs and performance are adequate and properly applied; and
- (3) Whether the Secretary's statutory authority, as augmented by this Act, is sufficient to deal with inefficient intermediaries and carriers either through the contract negotiation and budget review process or by replacing them.

The conferees are therefore instructing the General Accounting Office to study these issues and to report its findings to Congress within a year of enactment, together with recommendations on the appropriateness of moving from the cost-based reimbursement system to some other basis of payment for claims processing.

The conferees want to urge that any cost cutting measures be implemented in a careful manner with the understanding that the processing of medicare claims is an important function and that savings measures not undermine beneficiary services, professional relations, productivity investment or program safeguards.

It is the Committee's intent that the rates paid to contractors take account of their individual circumstances. Thus such factors as the relative complexity of the claims to be reviewed, the prevailing wages in the area, the relative need for beneficiary services, and other circumstances that may legitimately vary from contractor to contractor should be taken into account in determining each contractor's reasonable operating costs.

### c. Competitive contracting

#### *Present law*

Present law permits only on an experimental basis the selection of carriers and intermediaries on the basis of competitive bidding.

#### *House bill*

No provision.

#### *Senat amendment*

The Senate amendment would broaden the Secretary's authority to experiment with different kinds of contracts by including contracts other than fixed-price or performance-incentive contracts and by permitting competitive bidding.

#### *Conference agreement*

The Conference agreement follows the Senate amendment with a modification. The Conference modification would permit the Secretary, in each of the first 2 fiscal years following the year of enactment, to enter into no more than two competitively bid contracts under Part A and two such contracts under Part B. The Secretary would only be allowed to competitively compete to replace intermediaries and contractors who were poor performers, falling into the lowest 20th percentile of all performers, as measured by cost and performance criteria. The agreement requires that intermediaries must be health insuring organizations and perform the full range of intermediary functions. Further, the agreement requires that carriers perform the full range of carrier functions. The Secretary is required to establish standards and criteria for the purpose of evaluating an individual carrier's efficiency and effectiveness and to determine whether a contract is consistent with the efficient and effective administration of the program.

The Conferees are concerned that selection of contractors shall not be based solely on price. Consideration must also be given intermediary or to the ability of the carrier to perform the required functions in an efficient and effective manner. The Conferees emphasize the importance of having health insuring organizations serving as intermediaries and carriers. They further intend that the new authority for competitive contracting not be used to fragment the functions of carriers and intermediaries with respect to claims processing, quality control, and beneficiary services.

### d. Publication of Standards

#### *Present law*

The Secretary is required to establish by regulation standards and criteria with respect to the efficient and effective administration of Part A of the program by intermediaries.

#### *House bill*

No provision.

*Senate amendment*

The Senate amendment allows the Secretary to provide for publication of the standards for contractors through normal administration issuances rather than through the regulatory process.

*Conference agreement*

The Conference agreement follows the Senate amendment with a modification amendment to require that the public be given notice of the standards through the *Federal Register* and that the public be given an opportunity to comment on them prior to their implementation.

**42. Lesser of Costs or Charges (Section 2308)***Present law*

Medicare pays providers the lesser of costs or charges (LCC). HCFA regulations allow hospitals to calculate the amount of their costs and charges in the aggregate for inpatient and outpatient services.

*House bill*

No provision.

*Senate amendment*

The Senate amendment would require the Secretary to issue regulations to isolate the calculation of the lesser of cost or charges for outpatient services from the calculation for inpatient services.

*Conference agreement*

The conference agreement follows the Senate amendment with a modification.

The conferees are concerned that the disaggregation feature of the amendment may have an adverse effect on certain providers that are unable, due to the mix of patients they serve, to bill charges that are reasonably commensurate with their costs of furnishing outpatient services. Therefore, the conferees are directing the Secretary to modify the current rule, under which public providers determined to have no minimal charges are exempted from the lesser-of-cost, or-charge, provision and are reimbursed their reasonable costs.

The modification in the nominal charge rule would include the following features. First, the nominality test should not continue to be applied to aggregated Part A and Part B costs and charges. Instead, costs and charges should be treated separately for Part A and for Part B, or for inpatient services and for outpatient services, for purposes of applying the nominality test (except for services furnished by home health agencies, if the Secretary concludes that aggregation of Part A and Part B data is still appropriate for such services). Second, for providers that use a sliding scale of charges or a discounted schedule of charges that differentiates among patients based on their ability to pay, the nominality test should use such slidingscale or discounted schedule, rather than deeming the charges to be full customary charges as are actually billed for all

patients. (For this purpose, the Secretary shall aggregate charge data for all charge-paying patients.) Third, providers should be exempted from the lesser-of-cost-or-charges provision, and paid reasonable cost, if their billed charges do not exceed 60 percent of their costs, rather than 50 percent as the rule now states.

In addition, the conferees are directing the Secretary to apply the nominal charge rule to providers, that serve a substantial number of indigent patients. The nominal charge rule should be applied to such providers on the same basis as applied to public providers.

### **43. Coverage of Hemophilia Clotting Factor (Section 2324)**

#### *Present law*

Part B of Medicare excludes coverage for drugs and biologicals unless they are of the type that cannot be self-administered and are commonly furnished as incident to physician's services.

#### *House bill*

No provision.

#### *Senate amendment*

The Senate amendment would provide Medicare coverage, subject to utilization controls deemed necessary by the Secretary, for blood clotting factors and the supplies necessary for the self-administration of the clotting factor. The provision would apply to items and services purchased on or after enactment.

#### *Conference agreement*

The conference agreement follows the Senate amendment.

### **44. Indexing of Part B Deductible**

#### *Present law*

Part B enrollees are subject to an annual deductible of \$75 for covered expenses before any benefits are paid.

#### *House bill*

No provision.

#### *Senate amendment*

The Senate amendment would index the Part B deductible in calendar years 1985, 1986, and 1987 by the Medicare economic index. (The economic index is used to limit increases or decreases in prevailing charge levels under Part B.) It is estimated that the deductible would increase to \$78 in 1985, \$82 in 1986, and \$86 in 1987.

#### *Conference agreement*

The conference agreement does not include the Senate amendment.



#### **45. Cost-sharing for Durable Medical Equipment Furnished as a Home Health Benefit (Section 2321)**

##### *Present law*

Medicare payment for durable medical equipment which is not provided as a covered inpatient service is based on 80 percent of reasonable charges (80 percent of reasonable costs in the case of a provider), with one exception. Payment is based on 100 percent of costs when furnished as part of a covered home health service.

##### *House bill*

No provision.

##### *Senate amendment*

The Senate amendment would require 20 percent coinsurance on durable medical equipment provided by home health agencies. It also clarifies the definition of durable medical equipment and the coverage of such equipment when furnished by providers.

##### *Conference agreements*

The conference agreement follows the Senate amendment.

The conferees do not intend for this clarification of the definition and coverage of durable medical equipment to result in any reduction or restriction of current coverage under Medicare for medical appliances and equipment.

#### **46. Modification of Working Aged Provision (Section 2301)**

##### *Present law*

The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) changed the Medicare benefits for the working aged. TEFRA amended the Age Discrimination in Employment Act (ADEA) to provide that an employer must offer to an employee age 65 through 69 the same group health plan offered to employees under age 65. As of January 1, 1983, if the employee elects the employer plan, Medicare benefits become secondary to benefits under the employer group health plan for an employed individual between the ages of 65 and 69 (and for the spouse of such employed individual if the spouse is age 65 through 69).

##### *House bill*

No provision.

##### *Senate amendment*

The Senate amendment would provide that employers must also offer group coverage to an employee who has not reached age 65 in cases where the employee has a spouse age 65 through 69 under the same circumstances as coverage is offered to employees with a spouse under the age of 65. In the case where such employee elects the employer plan, Medicare would be secondary.

##### *Conference agreement*

The conference agreement follows the Senate amendment.



The conferees note that under current law, a medicare eligible employee between the ages of 65 and 70 has the option of rejecting the employer health benefit plan with the result that Medicare remains the primary payer. Regulations issued by the Equal Employment Opportunity Commission require that employees be provided notification of their options and be provided the opportunity to make their choice known to the employer in writing. Under the provisions of this bill, there is a similar option to elect the employer plan or medicare. The conferees are concerned that the individual eligible for medicare participate in the decision whether to be covered by the employer plan or medicare. Thus, the conferees wish to make it clear that the non-working spouse between the ages of 65 and 70 should be given notice by the employer and the opportunity to verify, in writing, whether he or she will not be covered by the spousal provision of the employer plan.

#### **47. Transfers to Federal Hospital Insurance Trust Fund**

##### *Present Law*

No provision.

##### *House Bill*

No provision.

##### *Senate Amendment*

The Senate amendment would specify that the Part B outlay savings, that accrue to the Federal Government as a result of this bill shall be transferred to the Part A trust fund for each of the fiscal years 1984, 1985, 1986 and 1987.

##### *Conference Agreement*

The conference agreement does not include the Senate amendment.

#### **48. Elimination of Part B Deductible for Certain Diagnostic Laboratory Tests (Section 2303)**

##### *Present law*

Current law authorizes the Secretary to negotiate with a laboratory a payment rate that is considered the full charge for diagnostic tests. The payment, which is made directly to the laboratory, equals 100 percent of the negotiated rate subject to the annual Part B deductible. The beneficiary is not liable for coinsurance payments.

##### *House bill*

No provision.

##### *Senate amendment*

The Senate amendment would eliminate application of the annual Part B deductible in the case of diagnostic tests performed in a laboratory which has entered a negotiated rate agreement with the Secretary.

*Conference agreement*

The conference agreement follows the Senate amendment with a modification specifying that the current law provision providing for negotiated agreements only applies to services not paid for under the new fee schedule (see Item 10).

**49. Repeal of Exclusion of For-Profit Organizations From Research and Demonstration Grants (Section 2331)**

*Present law*

Current law limits the awarding of grants for the conduct of research and demonstrations to non-profit organizations. Contracts are permitted to be awarded to both for-profit and non-profit organizations.

*House bill*

No provision.

*Senate amendment*

The Senate amendment would extend the research and demonstration grant authority to for-profit organizations.

*Conference agreement*

The conference agreement follows the Senate amendment.

**50. Repeal of Authority for Payments to Promote Closing and Conversion of Underutilized Hospital Facilities (Section 2353)**

*Present law*

Section 2101 of the "Omnibus Budget Reconciliation Act of 1981" (Public Law 97-35) authorized the Secretary to make Medicare and Medicaid payments to cover capital and increased operating costs associated with the conversion or closing of underutilized hospital facilities. The provision, which has never been implemented, restricts the number of facilities which may receive these funds to no more than 50 prior to January 1, 1984.

*House bill*

No provision.

*Senate amendment*

The Senate amendment would repeal Section 2101 of the Omnibus Reconciliation Act of 1981.

*Conference agreement*

The conference agreement follows the Senate amendment except that Section 2101 of the Act is retained with a modification deleting its effective date. In addition, the agreement requires the Secretary to provide to the Congress an analysis of the modifications required in Section 1884 of the Social Security Act in order to conform the closure and conversion program established therein to the prospective payment system established under Section 1886 of the Act. The modifications would be for the purpose of enabling the provision of assistance to those hospitals which the Secretary deter-

mines might encounter particular problems in converting facilities or parts of facilities from acute care services to other less intensive modes of care, or in closing facilities or portions thereof.

The agreement requires the Secretary to report the findings to Congress no later than March 1985 and to include in the analysis, views as to how and whether implementation of the closure and conversion provision as modified could result in achieving reductions in the total cost of hospital inpatient services and total medicare expenditures.

The conferees expect the Secretary will not implement the provision prior to reporting his findings to the Congress.

## **51. Judicial Review of Provider Reimbursement Review Board Decisions (Section 2351)**

### *Present law*

The "Social Security Amendments of 1983" (Public Law 98-21) permit a group of providers to bring action in the judicial district in which the largest number of them are located. Public Law 98-21 also requires certain administrative and judicial appeals by providers which are under common ownership or control to be made as a group. Providers are entitled to a group appeal before the Provider Reimbursement Review Board if they have a common issue of fact, law or regulation.

These provisions were included in a section of Public Law 98-21 entitled "Conforming Amendments". Therefore, these provisions, together with most of the prospective payment provisions, apply to items and services furnished by a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

### **a. Appeals**

#### *House bill*

The House bill would specify that those providers that brought an administrative appeal as a group because of a common issue of fact, law or regulation must then bring any judicial appeal as a group. The amendment applies to any administrative action or judicial appeal brought on or after enactment.

#### *Senate amendment*

No provision.

#### *Conference agreement*

The conference agreement follows the House provision.

### **b. Civil actions**

#### *House bill*

No provision.

#### *Senate amendment*

The Senate amendment would clarify that civil action may be taken within 60 days after notification is received (rather than determination is rendered) that the Board determines it does not

have authority to decide the question. The amendment would be effective upon enactment.

*Conference agreement*

The conference agreement follows the Senate amendment.

**c. P.L. 98-21 effective dates**

*House bill*

The House bill would specify that the P.L. 98-21 provisions are effective with respect to any action or appeal brought on or after enactment of this bill.

*Senate amendment*

The Senate amendment would specify that the P.L. 98-21 provisions are effective with respect to actions or appeals brought on or after April 20, 1983.

*Conference agreement*

The conference agreement specifies that for actions brought by groups of providers in a judicial area where the largest number of them are located, the effective date would be actions brought on or after April 20, 1983. For actions brought by providers under common ownership, the effective date is the date of enactment of this bill.

**d. Effective dates**

*House bill*

The House bill would provide that items (a) and (c) apply to appeals or actions brought after enactment of this bill.

*Senate amendment*

The Senate amendment provides that item (b) would be effective on enactment and item (c) would apply to court actions brought on or after April 20, 1983.

*Conference agreement*

The conference agreement provides that items (a) and (b) are effective on enactment, and item (c) is effective as specified above.

**52. Enrollment and Premium Penalty With Respect to the Working Aged Provision (Section 2338)**

*Present law*

The "Tax Equity and Fiscal Responsibility Act" (TEFRA) required employers to offer their employees aged 65 to 69 the same health benefits plan offered to their younger workers. Medicare payments are secondary with respect to these older workers (and their spouses aged 65-69). Aged employees who elect enrollment in such employer-offered health benefit plans may wish to delay enrollment in Part B because Part B coverage may be duplicative. However, persons who enroll late are currently subject to a penalty. The monthly Part B premium is increased by 10 percent for



each full 12 months that an individual delays enrollment in the program beyond his or her initial enrollment period.

#### **a. Enrollment penalty/special enrollment**

##### *House bill*

The House bill would waive the Part B enrollment penalty for workers and their spouses aged 65 through 69 who elect private coverage under the provision of TEFRA and would establish special enrollment periods for such workers. The waiver would apply for the period during which an individual continued to be covered under an employer's group health benefits plan.

##### *Senate amendment*

Same as House bill

#### **b. Effective date: penalty relief provision**

##### *House bill*

The House bill would provide that the penalty relief provision would be effective with respect to months beginning with January 1983 for premiums for months beginning July 1984.

##### *Senate amendment*

The Senate amendment would provide that the penalty relief provision would be effective with respect to months beginning with January 1983 for premiums for months beginning more than 90 days after enactment.

##### *Conference agreement*

The conference agreement follows the Senate amendment with a modification specifying that the provision is effective the first calendar month beginning at least 30 days after enactment.

#### **c. Effective date: enrollment periods**

##### *House bill*

The House bill would provide that the special enrollment provisions would be effective for months beginning with July 1, 1984 except that in the case of any individual who would have had a special period beginning earlier, the enrollment period would be deemed to begin on July 1, 1984.

##### *Senate amendment*

The Senate amendment would provide that the special enrollment provisions would be effective for months beginning more than 90 days after enactment except that in the case of any individual who would have had a special enrollment period beginning earlier, the enrollment period would be deemed to begin for the month beginning 90 days after enactment.

##### *Conference agreement*

The conference agreement follows the Senate amendment.



### 53. Waivers for Social Health Maintenance Organizations (Section 2355)

#### *Present law*

The Secretary has general authority to conduct experiments and demonstrations. While the Department has provided start-up funding for a social HMO project, waivers allowing the four demonstration sites to become operational have not been approved by the Office of Management and Budget.

#### *House bill*

No provision.

#### *Senate amendment*

The Senate amendment would require the Secretary to approve certain waivers for a project to demonstrate the concept of a social HMO at four sites within 30 days after submission of a waiver request or within 30 days of enactment in the case of waiver requests submitted prior to enactment.

#### *Conference agreement*

The conference agreement follows the Senate provision with a modification which requires submission to the Congress of an interim report on the status of the projects within 45 days of enactment. A final report is due to the Congress forty-two months after enactment.

The conferees are concerned that the Department has failed to implement certain Congressionally mandated demonstration projects on a timely basis. For example, the "Omnibus Reconciliation Act of 1980" (P.L. 96-499) required the Secretary to conduct two demonstration projects and submit reports on these projects to the Congress. One project was to determine both the extent to which the commencement of nutritional therapy in early renal failure could retard or arrest the progression of the disease and the implications of making such therapy generally available under the Part B program. The second study was to determine the implications of making the services of clinical social workers more generally available under the medicare program. P.L. 96-499 required the Secretary to submit reports on these demonstration projects, together with legislative recommendations, within 24 months of enactment, i.e. December 5, 1982. The Congress has not yet received the required reports.

### 54. Peer Review Organizations (Section 2347)

#### a. Payments

#### *Present law*

Payment of PRO's is made from the Part A trust fund. The Secretary is directed to fund PRO's in amounts determined to be reasonable, but not less than the 1982 funding levels (adjusted for inflation). This provision does not apply to PSRO's.

*House bill*

The House bill would require hospitals, as a condition of Medicare payment, to enter into an agreement with a PSRO in the area (which was in existence on July 1, 1983) and funds PSRO's out of the Medicare trust fund. The provision would be effective 60 days after enactment.

*Senate amendment*

The Senate amendment would include a similar provision except that it would not specify PSRO's in existence on July 1, 1983.

*Conference agreement*

The conference agreement follows the House provision with a modification which would eliminate the July 1, 1983 date.

**b. PRO agreements***Present law*

P.L. 98-21 required hospitals to enter into an agreement with a peer review organization as a condition of payment under the Medicare program. Such agreements must be entered into by October 1, 1984. Health benefit payer organizations may not qualify as a PRO until after October 1, 1984.

*House bill*

No provision.

*Senate amendment*

The Senate amendment would delay the date by which hospitals are required to have an agreement with the PRO from October 1, 1984 to January 1, 1985. The date on which health benefit payer organizations can first qualify as PRO's would be similarly changed.

*Conference agreement*

The conference agreement follows the Senate amendment with a modification which specifies that November 15, 1984 is the date by which hospitals are required to have an agreement with a PRO. Similarly, November 15, 1984 is the first date on which payer organizations could qualify as PRO's.

**c. Effective date***House bill*

The House bill would be effective 60 days after enactment.

*Senate amendment*

The Senate amendment would be effective May 1, 1984.

*Conference agreement*

The conference agreement is effective on enactment which is the date on which PSRO and PRO funding becomes available through part A. The conferees wish to make it clear that they intend that the Secretary shall continue funding PSROs in all areas where

they currently exist until such time as they have been replaced by a PRO.

## **55. Technical Amendments Relating to the Medicare Prospective Payment System (Section 2315)**

### **a. Blend of rates**

#### *Present law*

Public Law 98-21 established the new prospective payment system for paying hospitals under Medicare. The program is phased in over a three-year period (fiscal year 1984-fiscal year 1986). During the transition period, payment for a particular hospital discharge consists of a blend of the hospital specific payment rate and the Federal DRG payment rate (which is a blend of national and regional payment rates).

#### *House bill*

The House bill would clarify that the blend of the hospital-specific rate and Federal DRG rate is based on the individual hospital's cost reporting period. It would clarify that the blend of national and regional Federal DRG rates is tied to the Federal fiscal year and is therefore updated each October 1.

#### *Senate amendment*

No provision.

#### *Conference agreement*

The House bill contained a provision intended to clarify the method of paying hospitals under the new prospective payment system. The conferees concluded that the provision contained in the House bill was unnecessary.

### **b. State systems**

#### *Present law*

Public Law 98-21 provided that hospitals in a State may be reimbursed according to the State's hospital reimbursement control system rather than under prospective payment, provided certain conditions are met.

#### *House bill*

The House bill would require approved State systems to prevent unbundling of services and inappropriate admissions practices.

#### *Senate amendment*

Same as House bill.

### **c. Public comment**

#### *Present law*

The Secretary is required to publish in the Federal Register for public comment the proposed annual index and the final annual index of DRG's.

*House bill*

The House bill would clarify that public comment is required only on the proposed annual index.

*Senate amendment*

Same as House bill.

**d. PRO agreements***Present law*

Under Public Law 98-21, hospitals paid on the basis of the new prospective payment system are required to have an agreement with a peer review organization.

*House bill*

The House bill would require hospitals exempt from the Federal payment system to have agreements with PRO's or PSRO's.

*Senate amendment*

Same as House bill.

**e. Effective dates***Present law*

The effective date of October 1, 1983 in the prospective payment provisions was incorrectly applied only to the hospitals to which the new prospective payment system applies.

*House bill*

The House bill contains no clarification provision with respect to the effective date for exempt hospitals and State systems.

The House bill would require publication of proposed regulations by May 1, 1984 and (after a 45-day comment period) final regulations by August 1, 1984 with respect to requirements for State systems.

*Senate amendment*

The Senate amendment would clarify that the State-program and exempt-hospital provisions of Public Law 98-21 shall also be effective October 1, 1983.

The Senate amendment contains no provision with respect to State system regulations.

*Conference agreement*

The conference agreement follows the Senate amendment with respect to clarifying the effective date. The conferees do not intend for this amendment to be construed as requiring that the first of the 36-month periods specified in Section 1886(c)(1)(c) shall begin prior to the publication of final regulations implementing that provision.

With respect to the regulations, the conference agreement follows the House bill with an amendment. The amendment changes, to July 1, 1984 and October 1, 1984, the dates by which proposed and final regulations must be published on the rules for State rate



setting systems. In addition, the amendment directs the Secretary to develop a definition of hospitals with a "significantly disproportionate number of patients who have low income or are entitled to benefits under part A" and to identify such providers by December 31, 1984, so that a better determination can be made under existing law as to whether payment exceptions or adjustments are appropriate.

The amendment reflects the conferees' concern about the potentially harmful impact of the prospective payment system on public and other hospitals serving a significantly disproportionate number of patients who have low income or who are entitled to benefits under part A. As the Committee on Ways and Means and the Committee on Finance stated in their reports on the original 1983 prospective payment legislation, such hospitals may serve patients who are more severely ill than average and the DRG payment system may not take this factor into account

### **Additional considerations**

The Conferees wish to reaffirm their directive, contained in the 1983 legislation, that the Secretary provide for exceptions and adjustments for such hospitals if she determines them to be appropriate. The Conferees also wish to express their concern about the adequacy of efforts that have been made to date to determine whether such exceptions or adjustments might be needed. In particular, the Conferees note that no effort has been made to develop a definition of "significantly disproportionate" for the purpose of identifying particular hospitals (or categories of hospitals) so that any special needs can be accurately and specifically assessed.

The Medicare hospital prospective payment legislation provided an exception for rehabilitation hospitals and for rehabilitation units that are distinct parts of hospitals.

In the implementing regulations, the Department imposed a requirement that a rehabilitation unit have a full-time medical director as a condition for its exclusion from the prospective payment system. The legislation itself did not contain such a requirement. The conferees do not believe this regulatory requirement to be necessary. Alternatively, the conferees expect that professionally established standards will be relied upon—for example, those of the Joint Commission on Accreditation of Hospitals or of the Commission on Accreditation of Hospitals or of the Commission on Accreditation of rehabilitation facilities, and these do not contain a full-time medical director requirement.

### **56. Normalizing Credit of Medicare Taxes in the Hospital Insurance Trust Fund (Section 2337)**

#### *Present law*

The "Social Security Amendments of 1983" revised the accounting procedures of the Old Age and Survivors, Disability, and Hospi-



tal Insurance Trust Funds to provide that the Treasury would credit to the Trust Funds, at the beginning of each month, the amount of payroll taxes estimated to be received during the month. Under prior law, amounts were paid to the Trust Fund from "time to time."

*House bill*

The House bill would repeal the "normalization" provisions with respect to the Hospital Insurance Trust Fund. Thus, funds would be transferred from the Treasury to the HI Trust Fund as under prior law. The provision would not affect the OASDI Trust Funds.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House provision.

## **57. Services of a Clinical Psychologist Provided to Members of an HMO (Section 2322)**

*Present law*

Services of physician assistants and nurse practitioners are recognized as "medical and other health services" if they are furnished pursuant to a risk-sharing arrangement with a health maintenance organization.

*House bill*

No provision.

*Senate amendment*

The Senate amendment would provide that the services of clinical psychologists, when furnished pursuant to a risk-sharing arrangement with a health maintenance organization, are recognized as "medical and other health services."

*Conference agreement*

The conference agreement follows the Senate amendment with a modification which would leave to the discretion of the Secretary the identification of the qualifications necessary to be identified as a clinical psychologist.

## **58. Home Health Services Provided on a Daily Basis**

*Present law*

Home health nursing care and home health aide visits are provided, to the extent permitted in regulations, on a part-time or intermittent basis. The term "intermittent" has been subject to

varying interpretations by different intermediaries. Current guidelines define "intermittent" as permitting daily visits for two to three weeks.

### *House Bill*

No provision

### *Senate Amendment*

The Senate amendment would specify that home health nursing care and home health aide services may be provided on a daily basis (with one or more visits per day) to an individual for up to 45 days following a hospital discharge and, may be continued on a daily basis after such period, based on a physician's certification of exceptional circumstances. The amendment would specify that it could not be construed as altering any Medicare provision as in effect prior to enactment with respect to payment for services provided on a daily basis to persons who have not been discharged from a hospital within the preceding 45 days.

The amendment would require a study of the effectiveness of home health care in preventing hospital and skilled nursing facility admissions. The report would be due to Congress January 1, 1985.

### *Conference Agreement*

The Conference agreement does not include the Senate amendment.

The Conferees are concerned about the current lack of uniformity in the interpretation of existing law, which provides for coverage of home health nursing care and home health aide services on a part-time or intermittent basis. The term "intermittent" has been subject to varying interpretation by different intermediaries.

Current guidelines generally define "intermittent" as permitting daily visits for two to three weeks. The conferees understand current policy makes available medicare coverage for medically reasonable and necessary skilled nursing home health care and home health aide services for a short period of time after the initial two to three week period if the intermediary receives medical documentation from the provider supporting and justifying the need for such additional services. The amount of additional daily care need not be for a fixed period of time, but should be dictated by the medical need of the beneficiary.

The Conferees direct the Secretary to move quickly to identify the factors that have given rise to the lack of uniformity in the application of existing policy and to make such clarifications and take such other steps as may be necessary to remedy the problem. This should be more easily accomplished under a separate provision agreed to by the Conferees which provides for moving within three years to no more than 10 regional home health intermediaries (rather than the 47 as now provided for under current policy).

The Conferees wish to make clear their intention that the Secretary is to more uniformly apply *current policy* regarding intermittent care, and is not to respond to this directive in a way that would have the effect of cutting back on medicare home health coverage.

## Subtitle B—Medicaid and Maternal and Child Health Amendments

### 1. Medicaid Coverage for Pregnant Women and Young Children (Section 2361)

#### *Present law*

States must provide Medicaid to poor women and children receiving cash assistance under AFDC. They have the option of extending coverage at their current Federal matching rates to, among others, the following additional groups meeting AFDC income and resource requirements: first-time pregnant women; pregnant women in two-parent families where the principal breadwinner is unemployed; pregnant women in two-parent families; and children under age 18 or 21 in two-parent families (Ribicoff children).

#### a. Coverage requirements

#### *House bill*

The House bill would authorize 100 percent Federal matching assistance for services provided at State option to the following population groups meeting AFDC income and resources requirements if coverage was not available to such groups under the State's Medicaid program which was in effect on June 30, 1983: (1) single first-time pregnant women from medical verification of pregnancy; (2) pregnant women in two-parent families where the principal breadwinner is unemployed; (3) beginning in fiscal year 1988, pregnant women in all two-parent families; and (4) Ribicoff children under age 5 born after October 1, 1983.

#### *Senate bill*

Requires States to provide Medicaid coverage, beginning with medical verification of pregnancy, to first-time pregnant women meeting AFDC income and resources requirements.

#### *Conference agreement*

The conference agreement follows the Senate amendment with modifications as follows: States are required to provide categorically needy Medicaid coverage at regular Federal matching rates to the following groups meeting AFDC income and resources requirements: (1) first-time pregnant women from medical verification of pregnancy; (2) pregnant women in two-parent families where the principal breadwinner is unemployed, from medical verification of pregnancy; and (3) children born on or after October 1, 1983, up to age five, in two-parent families. Thus, coverage for Ribicoff children would proceed in one-year increments: in fiscal year 1985, States would be required to cover those up to one year of age; in fiscal year 1986, up to two years of age; and so on.

This amendment does not alter the current requirement that States may not impose coverage limitations on Ribicoff children based on age (except they must cover the children under 5, as specified). That is, for children between the ages of 5 and 18, age may not be used as a reasonable classification. Of course, States may continue to establish reasonable categories permitted under cur-

rent regulations, such as children in foster care homes. However, States must cover all children under 5, as specified in this amendment.

The conference agreement provides that these requirements would take effect on October 1, 1984, or, where the Secretary determines State legislation is necessary, the first day of the first calendar quarter after the close of the first regular legislative session after enactment, whether or not the Secretary issues implementing regulations.

### **b. Federal matching bonus to States**

#### *House bill*

The House bill provides for a one-half percentage point reduction in the four and one-half percent Federal matching penalty otherwise applicable in fiscal year 1984 for States not eligible for increased matching under the provisions described in a., above.

#### *Senate amendment*

No provision.

#### *Conference agreement*

The conference agreement does not include the House provision.

### **c. Treatment of payments for services**

#### *House bill*

The House bill provides that reductions in Federal payments and calculation of the State's target rate are to exclude payments made for services to qualified pregnant women and children.

#### *Senate amendment*

No provision.

#### *Conference agreement*

The conference agreement does not include the House provision.

### **2. Deeming of Income and Resources With Respect to Certain Minor Pregnant Women**

#### *Present law*

States, in determining Medicaid eligibility, may deem family income as available to a pregnant minor only when she is living in her parent's household. Parental deeming is allowed so long as the parent exercises responsibility for the care and control of the child, even if the child is only temporarily absent.

#### *House bill*

The House bill would allow States not to deem the income or assets of parents as available to a pregnant woman under 21 who does not have legal custody of other children. It would permit States to apply this nondeeming policy to pregnant adolescents living with parents, or in a custodial institution, or both.



*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House provision.

### **3. Clarification of Medicaid Entitlement for Certain Newborns (Section 2362)**

*Present law*

Certain States have established Medicaid application procedures that fail to provide for the automatic addition of a newborn child to a Medicaid beneficiary's family unit for coverage purposes.

*House bill*

The House bill provides that a child born to a woman eligible for and receiving Medicaid at the time of birth is deemed eligible for one year as long as the woman remains eligible.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

### **4. Medically Needy Income Levels**

*Present law*

Medically needy income levels for an SSI-related family of two adults with no income or resources, many be set at a level no higher than 133⅓ percent of the AFDC standard for a two-person family with no income or resources.

*House bill*

The House bill permits States to establish medically needy levels for a family of two adults up to 133⅓ percent of the three-person AFDC standard.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement does not include the House provision.

### **5. Recertification of Need for Stays in SNFs and ICFs (Section 2363)**

#### **a. Recertifications**

*Present law*

A State's evidence of a satisfactory program of controls over utilization must include evidence that physicians (or a physician assistant or nurse practitioner under the supervision of a physician)



recertify the need for continuing skilled nursing facility (SNF) and intermediate care facility (ICF) services every 60 days.

*House bill*

The House bill would require recertification of SNF patients 30, 60, and 90 days after admission, and every 60 days thereafter. It would require recertification of ICF patients 60 and 180 days after admission; 12, 18, and 24 months after admission; and annually thereafter.

*Senate amendment*

Similar provision with respect to SNF recertifications. Similar provision with respect to ICF recertifications except requires recertification after 120 days instead of 180 days after initial certification.

*Conference agreement*

The conference agreement follows the Senate amendment with modifications as follows. The physician recertification requirements for both SNF and ICF patients would become State Medicaid plan requirements. In addition, with respect to ICF recertifications, recertification would be required no later than 180 days after initial certification instead of 120 days.

**b. Grace period**

*Present law*

One hundred percent compliance is required.

*House bill*

The House bill would permit a 10-day grace period if the State can demonstrate that the physician had good cause for missing the deadline.

*Senate amendment*

Similar provision.

*Conference agreement*

The conference agreement follows the Senate amendment.

**c. Penalty**

*Present law*

The Federal penalty imposed on States which fail to have an adequate utilization control program is  $33\frac{1}{3}$  percent times the ratio of the number of patients in facilities with one or more records out of compliance to the total number of patients in facilities in the State.

*House bill*

The House bill would provide for a penalty equal to 5 percent times the ratio of the number of patient records out of compliance to the number of patient records included in the survey. No penalty would be imposed if the ratio were 3 percent or less.

*Senate amendment*

The Senate amendment would provide for a penalty equal to 5 percent times the ratio of the number of patients in facilities with one or more records out of compliance to the total number of patients in the State. No penalty would be imposed if less than 3 percent of the surveyed records were out of compliance.

*Conference agreement*

The conference agreement follows the Senate amendment with modifications as follows. Effective July 1, 1984, the current penalty would not apply to the physician recertification requirement with respect to SNF or ICF patients. However, the current penalty would continue to apply to the requirement that States have an effective program of medical review. The Conferees intend that the Secretary ensure that the States continue to comply with the physician recertification requirements, as revised by this agreement.

It is the understanding of the conferees that the States commonly use one team of health professionals to conduct the required medical reviews, and a separate team to conduct the required survey and certification activities. The conferees would urge the States to improve the coordination of these two important functions by consolidating the two reviews. In the view of the conferees, periodic, hands-on review of nursing home patients by independent teams of health professionals is an important mechanism for assuring quality of care.

**d. Secretarial duty***Present law*

A U.S. district court has held that the Secretary of Health and Human Services has the authority, but lacks the duty, to assure that nursing homes participating in the Medicaid program provide care consistent with the individual needs of their Medicaid patients. *In Re estate of Smith v. O'Halloran*, 557 F. Supp. 289 (D. Colo. 1983).

*House bill*

The House bill reaffirms the Secretary's existing duty to assure that the standards governing the provision of care to Medicaid patients in SNFs and ICFs, and the enforcement of those standards, are adequate to protect the health and safety of the residents and to promote effective and efficient use of public moneys.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

## 6. Waiver of Certain Membership Requirements for Certain HMO's (Section 2364)

### *Present law*

The number of Medicare/Medicaid beneficiaries enrolled in a health maintenance organization (HMO) or other prepaid plan delivering Medicaid services on a risk basis cannot exceed 75 percent of the total enrollment. The Secretary may waive the requirements in the case of public HMO's if the Secretary determines that special circumstances warrant and the entity is taking reasonable efforts to enroll non-Medicare/Medicaid beneficiaries.

### *House bill*

The House bill would permit the Secretary to modify or waive the 75 percent enrollment limitation in the case of an HMO that: (1) is nonprofit; (2) has at least 25,000 enrollees; (3) is and has been a Federally-qualified HMO for at least 4 years; (4) provides basic health services through its staff; (5) is located in a medically underserved area; and (6) had previously received a waiver of the 75 percent limitation under section 1115 of the Act. The Secretary may exercise this waiver only if she determines that special circumstances warrant and that the organization has made, and is making, reasonable efforts to enroll non-Medicare/Medicaid beneficiaries.

### *Senate amendment*

No provision.

### *Conference agreement*

The conference agreement follows the House bill with modifications as follows. Under current law, Medicaid eligibles enrolled in HMO's may disenroll, without cause, upon one month's notice. The conference agreement would permit States to require Medicaid beneficiaries who choose to enroll in HMO's meeting certain requirements to remain in the HMO for up to 6 months, unless the beneficiary had good cause to disenroll before that time. During the first month of each 6-month period, the beneficiary could disenroll without cause and receive a Medicaid card that did not restrict his or her choice of provider. For the remainder of each 6-month period, the beneficiary would have to satisfy the State that there was good cause for disenrollment, such as poor quality care or lack of access to needed specialty services. States would be expected to establish effective procedures for reviewing requests for disenrollment on a prompt and fair basis. As under current law, enrollment in HMO's would be voluntary; beneficiaries would have freedom of choice among participating HMO's, and between prepaid and free-for-service providers.

The conference agreement limits the ability of States to impose these restrictions on beneficiary freedom of choice to the following two types of entities: (1) Federally-qualified HMO's, and (2) organizations that are receiving, and have at least two years prior to contracting with the Medicaid program received, grants of at least \$100,000 under the Migrant Health Center, Community Health Center, and Appalachian Regional Commission programs. In each

case, at least 25 percent of the organization's prepaid patients would have to be other than Medicare or Medicaid beneficiaries. The States would be required to notify beneficiaries prior to enrollment, and at least twice a year thereafter, of their disenrollment rights. The current Federal regulatory requirements with respect to prepaid HMO contracts, including those relating to grievance procedures and quality assurance systems, would apply to these special "lock-in" arrangements as well.

## **7. Prohibiting Medicaid Copayments for Prescribed Drugs**

### *Present law*

States are allowed to impose nominal copayments on prescription drugs for most groups of Medicaid beneficiaries. Providers may not deny services on the grounds that a Medicaid patient cannot afford the required copayment.

### *House bill*

The House bill would prohibit the imposition of copayments on prescribed drugs.

### *Senate amendment*

No provision.

### *Conference agreement*

The conference agreement does not include the House provision.

## **8. Maximum Amount of Medicaid Payments to Puerto Rico and the Territories (Section 2365)**

### *Present law*

Current law established the following annual ceilings on the amount of Federal Medicaid matching payments which certain jurisdictions may receive; Puerto Rico, \$45 million; Virgin Islands, \$1.5 million; Guam, \$1.4 million; Northern Mariana Islands, \$350,000; and American Samoa, \$750,000.

### *House bill*

The House bill would raise the ceilings to the following levels, effective fiscal year 1984: Puerto Rico, \$77.1 million; Virgin Islands, \$2.6 million; Guam, \$2.4 million; Northern Mariana Islands, \$600,000; and American Samoa, \$1.3 million.

### *Senate amendment*

The Senate amendment would raise the ceilings to the following levels, effective fiscal year 1984: Puerto Rico, \$63.4 million, Virgin Islands, \$2.1 million; Guam, \$2.0 million; Northern Mariana Islands, \$550,000; and American Samoa, \$1.15 million.

### *Conference agreement*

The conference agreement follows the Senate amendment.



## 9. Payment for Psychiatric Hospital Services (Section 2366)

### *Present law*

Special reimbursement limitations apply with respect to hospital inpatients who are awaiting nursing home placement.

### *House bill*

The House bill would delay until July 1, 1985, the application of reimbursement limitations with respect to public psychiatric hospitals. The House bill further provides that the reductions made for the 12-month periods ending June 30, 1986, and June 30, 1987, are one-third and two-thirds, respectively, of the amounts which would otherwise have been required.

### *Senate amendment*

Same as House bill.

## 10. Miscellaneous Technical Amendments (Section 2373)

### *Present law*

Titles V and XIX of the Social Security Act contain certain technical errors.

### *House bill*

Makes technical corrections to titles V and XIX of the Social Security Act.

### *Senate bill*

No provision.

### *Conference agreement*

The conference agreement follows the House bill with a modification as follows. The conference agreement directs the Secretary not to take any compliance, disallowance, penalty or other regulatory action against a State because a State, in determining eligibility for noncash Medicaid recipients, is using an income or resource standard or methodology that is less restrictive than the applicable cash assistance standard of methodology. The Secretary is further directed to report to Congress within 12 months of enactment on the impact of the application of income and resource standards and methodologies under the cash assistance programs to medically needy recipients and other noncash eligibles. The moratorium on Secretarial action is to run from the date of enactment until 18 months after the date on which the Secretary submits her report.

In the Omnibus Budget Reconciliation Act of 1981, P.L. 97-35 (OBRA), States were given certain flexibility in structuring their medically needy programs. They were allowed to limit coverage to certain categories of medically needy individuals, and to vary the services they offered to the different groups they covered. No change was made or intended with regard to financial eligibility policy. Before OBRA, States could establish income or resource standards or methodologies for their medically needy programs that were, in some cases, less restrictive than those used in the related cash assistance programs.



Effective October 1, 1981, the Secretary issued interim regulations to implement these changes. These regulations made major changes in the pre-OBRA financial eligibility rules, allowing the States to impose more restrictive standards and methodologies than under previous law.

Section 137(a)(8) of the Tax Equity and Fiscal Responsibility Act, P.L. 97-248 (TEFRA), amended the Medicaid statute to clarify that Congress did not intend to change the policies governing the income and resource standards and methodologies for determining eligibility of the medically needy from those in effect before OBRA. This amendment provided in part that the methodology to be used in determining income and resource eligibility for the medically needy must be the "same methodology" used under the relevant cash assistance program.

The Department has not revised the 1981 interim regulations or otherwise published regulations to implement the TEFRA amendment. However, it is the understanding of the conferees that the Department has implemented this provision in an overly literal fashion, without taking into account the intent of the TEFRA clarification.

For example, the Department is treating certain income and resource rules as "methodology" that must strictly follow SSI or AFDC rules, even though all States with medically needy programs have traditionally been permitted to use less restrictive rules in certain areas. Thus, the Department has taken the position that aged, blind, and disabled medically needy applicants who enter nursing homes and who have marginally excess resources on the first day of the month can not attain Medicaid eligibility during the month, even after their resources are sufficiently depleted by medical costs, because SSI rules only allow eligibility from the first of the month. The Department has also indicated that it may impose quality control sanctions against the States that are using eligibility procedures that were allowed before OBRA and which make sense in the context of the medically needy program but which happen to be less restrictive than the relevant cash assistance procedures. Similarly, the Department has taken the position that the "single standard" requirement of the TEFRA amendment prohibits States from establishing less restrictive medically needy income levels for single adults and couples because this would result in differences in medically needy income levels among groups of the same family size depending on the relative numbers of adults and children.

The Department's overly restrictive interpretation of section 137(a)(8) of TEFRA has posed grave administrative problems for the States and threatens to cause great hardship for applicants and beneficiaries. It is also clear to the conferees that the strict application of the cash assistance rules to the medically needy and other noncash groups produces unintended, and in some cases, undesirable, consequences. The conferees have therefore decided to impose a moratorium on the Department's implementation of the TEFRA amendment until the Congress has an opportunity to study and legislate on the matter.

It is the understanding of the conferees that the Department has not yet actually taken a disallowance or quality control penalty

against any State. The conferees intend that, during the moratorium, the Secretary not proceed with the imposition of any sanctions, or otherwise suggest to the States that they must use more restrictive cash assistance standards and methodologies in their medically needy or other noncash recipient programs. States may use less restrictive standards and methodologies in their noncash programs, although they are still foreclosed from being more restrictive than the relevant cash assistance programs. It is the expectation of the conferees that the States will be reasonable in establishing less restrictive variations in the cash assistance methodologies and standards.

## **11. Extension of Medicaid Payment Reductions and Offsets**

### *Present law*

The Omnibus Budget Reconciliation Act of 1981, P.L. 97-35, provided that the Federal matching payments to which a State is otherwise entitled were to be reduced by 3 percent in fiscal year 1982, 4 percent in fiscal year 1983, and 4.5 percent in fiscal year 1984. A State may qualify for a percentage point offset to these reductions of up to 3 percent if it has a qualified hospital cost review program, an unemployment rate which exceeds 150 percent of the national average, or fraud and abuse recoveries greater than one percent of Federal expenditures. In addition, States may earn back part or all of the reductions if expenditures remain below specific target amounts.

### *House bill*

No provision.

### *Senate amendment*

The Senate amendment extends the existing reduction and offset provisions for 3 years. The reduction rate would be 3 percent for fiscal years 1985, 1986, and 1987.

### *Conference agreement*

The conference agreement does not include the Senate amendment.

## **12. Mandatory Assignment of Rights of Payment by Medicaid Recipients (Section 2367)**

### *Present law*

States are permitted to require Medicaid applicants to assign to the State their rights to medical support and third party payments for medical care. Approximately 25 States have taken advantage of this option.

### *House bill*

No provision.

*Senate amendment*

The Senate amendment would mandate States to require Medicaid applicants to assign to the State their rights to third party payments as a condition of eligibility.

*Conference agreement*

The conference agreement follows the Senate amendment.

### **13. Requirements for Medical Review and Independent Professional Review (Section 2368)**

*Present law*

Medical review requirements for SNF's and independent professional review requirements for ICF's under Medicaid both call for teams of physicians, registered nurses, and other appropriate personnel to conduct virtually similar kinds of review.

*House bill*

No provision.

*Senate amendment*

The Senate amendment would make State plan requirements consistent for medical review and independent professional review for both ICF's and SNF's. The Senate amendment would also correct a technical error to assure that Christian Science sanatoria are excluded from the revised review requirements.

*Conference agreement*

The conference agreement follows the Senate amendment.

### **14. Flexibility in Setting Payment Rates for Hospitals Furnishing Long-term Care Services Under Medicaid (Section 2369)**

*Present law*

Special requirements are provided for the establishment of payment rates for small rural hospitals furnishing skilled nursing or intermediate care facility services under Medicaid.

*House bill*

No provision.

*Senate amendment*

The Senate amendment would delete the requirements applicable only to hospital-furnished long-term care services. It provides that rates must meet the same general criteria as are applicable to rates for similar services provided by other long-term care institutions, although the actual rate paid may vary.

*Conference agreement*

The conference agreement follows the Senate amendment with a modification. States would be permitted to pay for long-term care services at the designated hospitals either on the basis of the special payment rates provided under current law or on the basis of the same general criteria that are applicable to hospitals and nurs-

ing homes. Whatever payment method a State chose would have to be applied to all the hospitals in question.

### **15. Authority of Secretary To Issue and Enforce Subpoenas Under Medicaid (Section 2370)**

#### *Present law*

The Secretary is authorized to issue and seek enforcement of subpoenas under Medicare to obtain information needed in connection with hearings, investigations, and other matters related to fraud and abuse.

#### *House bill*

No provision.

#### *Senate amendment*

The Senate amendment would authorize the Secretary to issue and seek enforcement of subpoenas under Medicaid to the same extent allowed under Medicare.

#### *Conference agreement*

The conference agreement follows the Senate amendment.

### **16. Medicaid Clinic Administration (Section 2371)**

#### *Present law*

States may cover clinic services under their Medicaid programs. Regulations issued by the Department of Health and Human Services limit coverage of clinic services to situations in which services are furnished under the direction of a physician. In certain cases, this physician-direction rule has been interpreted as requiring that clinic administrators be physicians.

#### *House bill*

No provision.

#### *Senate amendment*

The Senate amendment provides that the clinic need not be administered by a physician.

#### *Conference agreement*

The Conference agreement follows the Senate amendment.

### **1. Increase Authorization for Maternal and Child Health Block Grant Program (Section 2372)**

#### *Present law*

The permanent authorization for the Maternal and Child Health Services (MCH) Block Grant is \$373 million. In fiscal year 1983, an additional \$105 million was appropriated for the Block Grant, and in fiscal year 1984, an additional \$26 million was appropriated.

#### *House bill*

No provision.



### *Senate amendment*

The Senate amendment provides for an increase in the permanent authorization level for the MCH Block Grant to \$478 million, effective fiscal year 1984.

### *Conference agreement*

The conference agreement follows the Senate amendment.

Under current law, the Secretary is directed to prescribe the content of the annual reports that the States are required to submit regarding the operation of their MCH Block Grant programs. The conferees are concerned that the Secretary has not required, and many States have not submitted, basic data regarding the effectiveness of their programs, including the number of mothers and children served, and the cost of providing services to them. The conferees note that the usefulness of a recent GAO report on the MCH Block Grant (GAO/HRD-84-35) was compromised by the absence of such basic information. The conferees expect that the Secretary will begin immediately to secure and make available to the Congress the information necessary to evaluate and compare the performance of different States assisted under the MCH Block Grant authority with regard to the numbers of people served and the cost-effectiveness of those services.

## **SUBTITLES C AND D—RECOVERY OF HILL BURTON FUNDS AND UN-COMPENSATED SERVICES PROVIDED BY SKILLED NURSING FACILITIES INTERMEDIATE CARE FACILITIES**

### **1. Recovery of Hill-Burton Funds (Section 2381) and Study (Section 2391)**

#### **a. Recovery**

##### *Present law*

The Federal government is entitled to recover amounts awarded to a facility for construction, modernization, or conversion under Title VI and Title XVI of the Public Health Service Act if, within 20 years, the facility (1) is sold or transferred to a proprietary entity, or (2) undergoes a change in use from that for which the assistance was originally provided.

##### *House bill*

The House bill would require that, in the case of Hill-Burton facilities sold or transferred or subject to a change in use after enactment, the transferor or owner must give the Secretary written notice not later than 10 days from the date of the sale, transfer, or change in use, or be subject to an interest penalty. If, within 180 days after notification, the Federal Government has not collected its recovery, an interest penalty would apply.

In the case of Hill-Burton facilities that were sold or transferred or that underwent a change in use before the date of enactment, the House bill provides that an interest penalty would begin to accrue if the recovery had not been agreed to and paid by July 1, 1984. The interest penalty would run until the recovery amount, plus interest, is paid to the Federal government.



*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill with modifications as follows. In the case of facilities that were sold or transferred or underwent a change in use before the date of enactment, the interest penalty would not begin to accrue until 30 days after enactment, but in no case earlier than 180 days from the date of sale, transfer, or change in use. The conferees expect that the Department, upon notification, will expedite recovery proceedings to avoid subjecting facilities to interest charges that might result from Departmental delay. The Secretary may in regulation provide that, where such delays are caused solely by the Department, the resulting interest charges may be waived.

The modification further authorizes the Secretary to waive recovery altogether in the case of the sale or transfer of a facility to a proprietary entity only if the following requirements are met. First, the new owner or manager must agree to assume and comply with the Hill-Burton "community service" obligation, as implemented by current regulations. Secondly, the acquiring entity must have established an irrevocable trust, the corpus and income of which are to be used exclusively for the provision of uncompensated services to persons unable to pay in accordance with current regulations. The trust must be established in an amount equal to the greater of (1) twice the cost of the remaining "uncompensated services" obligation of the Hill-Burton facility, including any deficits to be made up, as determined by the Secretary under current regulations; or (2) the amount the Federal government would be entitled to recover, as determined by the Secretary.

The purpose of this grant of authority to the Secretary to waive recovery is to assure that, in lieu of the Federal government recouping its financial interest in a Hill-Burton facility, the community served by the facility will continue to have access to needed services there. The conferees expect the Secretary to monitor and enforce compliance with the "community service" and "uncompensated service" obligations on the part of the entity receiving a waiver. In cases where these requirements are not being met, the Secretary is expected to withdraw the waiver and effect recovery.

## **b. Liens**

*Present law*

The Federal recovery right does not constitute a lien upon a Hill-Burton facility prior to judgment.

*House bill*

The House bill would provide that the right of recovery constitutes a lien on a Hill-Burton facility prior to judgment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill with a modification. It retains current law with respect to liens, and also requires the Secretary to conduct a study to determine whether the current regulations should distinguish between hospitals and nursing homes with respect to compliance with the statutory requirement that a Hill-Burton facility provide a reasonable volume of uncompensated services to persons unable to pay. The study is to be transmitted to the Congress no later than January 1, 1985.

Under the Hill-Burton program, hospitals, nursing homes, and other facilities undertook "community service" and "uncompensated services" obligations in exchange for Hill-Burton grants and loans and loan guarantees. In 1979, the Secretary of Health and Human Services published final regulations implementing these important contractual and statutory requirements. These regulations specify the standards which Hill-Burton facilities must meet and the procedures which they must follow in order to comply with their "community service" and "uncompensated services" obligations.

It is the understanding of the conferees that, while the "uncompensated services" regulations are appropriate in a hospital context, they may not give adequate recognition to the different characteristics of nursing homes from the standpoint of determining compliance. The conferees do not intend that, in examining this question, the Secretary reconsider the issue as to whether the difference between the rates paid by Medicaid and the rates paid by private patients can be treated as Hill-Burton "uncompensated care;" Medicaid patients are not, and never have been, "persons unable to pay" for purposes of the Hill-Burton program. Instead, the conferees expect that the Secretary will identify those regulatory changes, if any, that are necessary to more appropriately define and evaluate compliance by Hill-Burton nursing homes with their "uncompensated services" obligations.

The conferees note that the Hill-Burton program is authorized by the Public Health Service Act, which is within the jurisdiction of the Senate Committee on Labor and Human Resources. Though not conferees, the committee of jurisdiction has indicated its agreement to the amendment as modified.

#### **TITLE IV—SMALL BUSINESS PROGRAMS**

*House amendment*

The House Amendment contained a provision relating to Small Business Act Disaster Loans.

*Senate amendment*

No provision.

*Conference agreement*

The Senate recedes to the House.

with maintaining the effective functioning of the VA loan guaranty program. In addition, the conference agreement would require that not less than 60 percent of the purchases during any fiscal year of property acquired by the VA be financed by vendee loans. Also, the House provision that would authorize the Administrator to increase the maximum to 80 percent for any fiscal year is modified so that, before exercising the authority, the Administrator would be required to determine that the increase was necessary to maintain the effective functioning of the loan guaranty program.

It is the conferees' intention that, in carrying out this provision, the VA will analyze the properties in its inventory and encourage the procurement of private financing by sales agents and prospective purchasers in cases where the properties appear to be marketable with non-VA financing.

#### *Sale of vendee loans with recourse*

In addition, the conference agreement contains a provision, also effective October 1, 1984, relating to VA sales of vendee loans to private investors "with recourse"—that is, with the right to sell back to the VA, at no loss to the investor, a loan that is in default for a specified period of time. Under this provision, the VA would not be permitted to sell vendee loans with recourse unless the Administrator determined that doing so was necessary in order to maintain the effective functioning of the loan guaranty program.

#### *Sunset provision*

The conference agreement provisions relating to vendee loans would expire on October 1, 1987.

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#### Subtitle A—Improvements in OASDI Program

##### 1. Tax-Exempt Interest in Calculation of Taxable Social Security Benefits

###### *Present law*

Under the 1983 Social Security Amendments, beginning in 1984, a taxpayer adds tax-exempt interest to adjusted gross income and

half of social security benefits as the first step in calculating the amount of benefits subject to tax. From this sum is subtracted a \$32,000 threshold (\$25,000 for single individuals). Half the excess (but never more than half of benefits) is included in adjusted gross income.

*House bill*

No provision.

*Senate amendment*

The Senate amendment deletes tax-exempt interest from the formula used to calculate the amount of taxable social security benefits, effective for taxable years beginning after December 31, 1983.

*Conference agreement*

The conference agreement follows the House bill.

## 2. Social Security Treatment of Certain Church Employees

*Present law*

Under the Social Security Amendments of 1983, employees of religious and other nonprofit organizations (not including ministers or members of religious orders) are subject to mandatory social security coverage, effective January 1, 1984. Prior to these amendments, employees of nonprofit organizations were exempt from social security coverage unless the organization waived, or was deemed to waive, its exemption.

The FICA tax rate is 7 percent each for employees and employers (for a combined 14 percent rate) in 1984, increasing to a combined rate of 15.3 percent in 1990. A credit (0.3 percent of wages) is allowed in 1984 against the employee FICA tax. For employees of tax-exempt organizations, wages of less than \$100 per calendar year are not subject to social security taxes.

The tax rate applicable to self-employed individuals (SECA) equals the combined employee-employer FICA rate. For 1984 through 1989, a self-employment tax credit (2.7 percent in 1984) lowers the effective SECA rate.

*House bill*

No provision.

*Senate amendment*

### *Election of SECA treatment*

The Senate amendment allows a one-time irrevocable election by a church or qualifying church-controlled organization to exclude from the FICA tax base remuneration for all services performed for the organization, other than in an unrelated trade or business. The employees of organizations so electing will be liable for self-employment (SECA) taxes with respect to the excluded services.

For employees of electing organizations, wages of less than \$100 per calendar year are not subject to SECA taxes and the SECA tax base is generally conformed to the applicable FICA rules.



Electing organizations remain subject to income tax withholding and reporting requirements with respect to all employees. Treasury may revoke an election for continuing failure to provide required information.

This provision is effective for services performed on or after January 1, 1984.

#### *Eligibility to make election*

An election is available to: (1) churches (including conventions or associations of churches), (2) elementary or secondary schools controlled, operated, or principally supported by churches (or conventions or associations of churches), and (3) church-controlled tax-exempt organizations (sec. 501(c)(3)), *except* any such organization which both

(A) offers goods, services, or facilities for sale to the general public (e.g., to persons who are not church members), other than on an incidental basis and other than at a nominal charge, and also

(B) normally receives more than 25 percent of its support from the sum of (a) governmental sources, and (b) receipts from admissions, sales of merchandise, performance of services or furnishing of facilities other than in unrelated trades or businesses.

To make an election, an organization must state that it is opposed for religious reasons to payment of social security taxes.

#### *Procedure for making election*

An election must be made prior to the first date, more than 90 days after enactment, on which the electing organization's quarterly employment tax return would be due. The election would apply to services performed on or after January 1, 1984.

#### *Conference agreement*

The conference agreement follows the Senate amendment.

The conferees agreed to the amendment in order to provide mandatory coverage under social security for employees of churches and at the same time allow the religious convictions of certain employing churches to be reflected in the choice not to be subject to the employer tax. In adopting the amendment, it is not the intention of the conferees to express an opinion on the constitutionality of the original coverage provision of the 1983 amendments.

### **3. Coverage of Employees Under Social Security and Federal Retirement Systems**

#### **a. Breaks in service**

##### *Present law*

The Social Security Amendments of 1983 provided social security coverage for newly hired Federal civilian employees effective with remuneration paid after December 31, 1983. Persons continuously in the employ of the United States since December 31, 1983 (or with a break in such employment of 365 days or less) will not be covered. Legislative branch employees are covered by social security unless they were covered by the Civil Service Retirement System (CSRS) on December 31, 1983.

Contrary to the intent of P.L. 98-21, there are several gaps and anomalies under current law. First, a person in Federal employment that is already covered by social security, (mainly the armed services, which have been covered since 1956) can retire from military service, enter Federal civilian service, and be exempt from social security. Conversely, a person who only technically severs his Federal civilian employment connection in order to serve a term of duty with an international organization would be treated as having had a break in service upon his return to domestic service, and would be covered under social security if such break exceeded 365 days.

#### *House bill*

In order to prevent Federal employees who had been previously covered under social security from losing coverage as a result of a break in service of more than 365 days, the House bill provides that persons transferring from other government service to civilian service will be covered under social security, unless (a) the other service was in an international organization, or (b) the person is returning to civilian service after temporary military or reserve duty and is exercising reemployment rights under chapter 43 of title 38, U.S.C.

#### *Senate amendment*

No provision.

#### *Conference agreement*

The conference agreement follows the House bill.

### **b. Legislative branch employees**

#### *Present law*

Legislative branch employees who were covered by CSRS on December 31, 1983, can withdraw from CSRS after that date and not be covered by social security of CSRS.

#### *House bill*

The House bill provides that legislative branch employees who were covered under either CSRS or another Federal civilian retirement system on December 31, 1983, but who have a break in service of less than a year after that date, will be covered by social security on their return or transfer to legislative employment unless they elect coverage under CSRS within 45 days. This provision will also allow legislative branch employees who take periods of leave without pay of less than a year to return to legislative branch employment without disturbing their participation in the Civil Service Retirement System, as long as they reelect coverage within 45 days.

#### *Senate amendment*

The Senate amendment is similar to the House bill, except individuals who elect to receive a refund of CSRS contributions or who have legislative branch employment which is not covered under CSRS would lose their exemption from social security.

*Conference agreement*

The conference agreement follows the Senate amendment with a modification.

The conference agreement provides that any legislative branch or other Federal employee who withdraws from the civil service retirement system (CSRS) after June 14, 1984 and takes a refund of his contributions may not thereafter be exempt from social security coverage while employed in the legislative branch. In addition, an individual who has any legislative branch employment after June 14, 1984 which is not subject to the CSRS could not also be exempt from social security coverage (regardless of whether he has applied for a refund of his prior civil service retirement contributions). Employees in the legislative branch who take leaves of absence without taking a refund of their CSRS contributions may (according to the practice of the employing office) continue to be covered under CSRS. If they are not automatically re-covered under CSRS, they will be covered under social security unless they re-join CSRS upon resumption of their legislative branch employment.

Under the conference agreement, the exemption for social security coverage will also cease to be available to any individual who took a refund of CSRS contributions based on a separation or transfer during the period from January 1, 1984 through June 14, 1984 or who has legislative branch employment which was not covered under CSRS during that period. However, any such individual can reestablish the exemption (provided that he was covered under CSRS or another Federal retirement system on December 31, 1983) if he has reentered the CSRS after the point when he last withdrew from it and prior to the 31st day after enactment. For an individual who is not in Federal employment on the date of enactment, the 30-day period will run from the date on which he again becomes a legislative branch employee. An individual will be considered to have reentered the CSRS if he applies to do so within the appropriate time and the coverage subsequently does become effective.

### **c. Nonprofit organizations**

*Present law*

Effective January 1, 1984, employees of all nonprofit organizations are covered by social security on a mandatory basis. Employees in certain nonprofit organizations (Legal Service Corporations, for example) who are covered on a mandatory basis by the Civil Service Retirement System (CSRS) will thus be covered on a mandatory basis by social security as well. These employees are not provided relief from double-taxation under Title II of the Federal Physicians Comparability Allowance Amendments of 1983 (Public Law 98-168), known as the Federal Employees' Retirement Contribution Temporary Adjustment Act.

*House bill*

No provision.



*Senate amendment*

Under the Senate amendment, employees of nonprofit organizations who are covered on a mandatory basis by CSRS would be treated like Federal employees for purposes of social security. They would therefore be covered by social security only if newly hired after January 1, 1984, or if they had a break in Federal service lasting more than 365 days. In such cases, the provisions of P.L. 98-168 would apply to them. This provision would apply to services performed on or after January 1, 1984.

*Conference agreement*

The conference agreement follows the Senate amendment.

#### **4. Increased Enforcement of Earnings Test**

*Present law*

Social security beneficiaries are not required to file earnings reports until the close of the calendar year.

*House bill*

The House bill requires the Secretary to implement procedures for obtaining earnings reports earlier than under present law and to make earlier adjustments of benefit amounts on account of excess earnings.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

### **Subtitle B—Improvements in SSI and AFDC Programs**

#### **PART 1.—IMPROVEMENTS IN SSI PROGRAM**

##### **1. Increase in Dollar Limitations Under SSI Assets Test**

*Present law*

SSI eligibility is restricted to qualified persons who have countable assets of less than \$1,500, or less than \$2,250 in the case of married couples. (This amount has not been increased since the SSI program began in 1974.)

In determining assets, a number of items are not included, such as the individual's home; life insurance policies with a total face value of \$1,500 or less; and, within reasonable limits set by the Secretary of Health and Human Services, household goods, personal effects and an automobile. Regulations place a limit of \$2,000 in equity value on excluded household goods and personal effects and exclude the first \$4,500 in current market value of an auto (100 percent of the auto's value if it is used for medical treatment or employment or has been modified for use by a handicapped person). The dollar limits on household goods and personal effects and the limit on the value of the automobile have been increased by regulation once since 1974. In 1976, SSI law was changed to

eliminate limitations on the value of a home. Assets, tools and other property essential to self-support are also excluded.

In 1982, a provision was added to also exclude from counted resources the value of burial plots. In addition, to provide SSI applicants and recipients an alternative to the life insurance exclusion previously described, the 1982 amendment allows for the exclusion of up to \$1,500 of separately identifiable funds set aside for burial expenses.

#### *House bill*

Increase the countable assets limit by \$100 a year for an individual and \$150 a year for a couple, beginning in calendar year 1985, and each year through calendar year 1989. The limit would be \$2,000 for an individual and \$3,000 for a couple in 1989 and thereafter. Effective January 1, 1985.

#### *Senate amendment*

No provision.

#### *Conference agreement*

The conference agreement follows the House bill. The conferees believe that a major purpose of allowing SSI recipients to retain a certain amount of assets is that recipients sometimes incur major costs of an urgent nature which cannot be met from the monthly grant. An example would be the need to replace a furnace or other essential appliance. The managers are concerned that an increase in the assets limit target additional Federal costs on recipients who already have accumulated the maximum allowable reserves against such contingencies rather than on those who may be without any resources to deal with such emergencies. The managers direct the Secretary to examine this problem and report to the Congress by June, 1985 with recommendations on it. If the Secretary is able to recommend a more appropriate way to deal with this problem, the managers intend that the proposed increases for years after 1985 should be replaced by a more targeted approach.

## **2. Limitation on Recoupment Rate in Case of Overpayments**

#### *Present law*

The Secretary is authorized to recover SSI overpayments by adjusting future payments or by direct recovery from the individual. Overpayments may be waived under conditions specified in law and regulations. When an overpayment is detected, SSA sends a notice to the recipient. The notice contains information regarding relief from recovery and rights of appeal. In addition it requests a full refund, and, in those cases where the individual is still receiving benefits, it proposes full withholding of the monthly benefit. The notice also indicates that the individual should contact SSA if he disagrees with the proposed rate of recoupment.

#### *House bill*

In the case of overpayments, limits the amount of adjustment or recovery in any month to the lesser of: (1) the amount of the benefit for that month; or (2) an amount equal to 10% of the countable



income (including the SSI payment) of the individual (or couple) for that month. This limitation would not apply if there is fraud in connection with the overpayment. Effective October 1, 1984.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill with an amendment which allows the recipient to request a different rate at which income may be withheld or recovered. The managers intend that the notice sent to claimants shall clearly indicate that a 10 percent rate of withholding is the norm and that the beneficiary may agree to a faster rate of repayment, but the managers direct that such information not be presented in a manner which would lead recipients to believe that faster repayment is expected or required.

To make clear that the 10 percent applies to the total Federally administered benefit rate, the conference agreement specifically states that State supplementary benefits are included. It is not intended that this reference should give rise to any inference as to whether or not such supplementary payments are intended to be included when the term "benefits under this title" is used elsewhere in the law.

### **3. Limit on Recovery of Overpayments When Recipient Has Excess Assets**

*Present law*

If, in any month, a recipient's assets exceed the asset limit (currently \$1,500 for an individual and \$2,250 for a couple) the individual is ineligible for benefits in that month and the entire amount of the benefit paid for that month is considered an overpayment subject to recovery. These overpayments are subject to waiver.

*House bill*

Limits the amount that may be considered an overpayment (and therefore subject to recovery) in the case of recipients whose assets had exceeded the dollar asset limitations to the lesser of: (1) the amount of the benefit paid; or (2) the greatest amount by which the total value of the assets exceeded the dollar asset limitation for a period of one or more consecutive months during such period. Effective October 1, 1984.

*Senate amendment.*

No provision.

*Conference agreement*

The conference agreement follows the House bill with the following modification: instead of the provision in the House bill, in any case where there is an overpayment based on an excess of assets of \$50 or less, the recipient would be deemed to be without fault for purposes of waiving the overpayment unless the Secretary finds

that the failure to report the excess was knowing and willful on the part of the recipient.

The managers intend that, in cases where an individual is found for the first time to have minimal excess assets of \$50 or less, the provision will ordinarily require a waiver of the resultant overpayment just as if the Department had found that the existing law requirements for waiver were fully met. The only exceptions anticipated would be cases where there is blatant evidence that the recipient was fully aware of the requirements of the law and of the existence of the excess assets and chose to conceal them. The managers further intend that where waiver is required under this provision, the Department will undertake to provide adequate instruction and monitoring to minimize the likelihood that an inadvertent overpayment would again occur. The managers recognize that there can be cases where larger amounts of excess assets can exist in circumstances where it would be inappropriate to require full repayment of SSI benefits. However, the managers believe that such situations should be adequately provided for by an existing statutory provision which directs the Secretary to avoid penalizing individuals who are without fault. The Secretary is directed to review the regulations and procedures implementing this statutory provision and to make any necessary changes to assure that a realistic assessment of the culpability of individuals is made.

#### 4. Exclusion of Retroactive Payments From Resources

##### *Present law*

For purposes of determining SSI eligibility and benefit amounts, a retroactive SSI check is not counted as income to the recipient. By regulation, SSA has provided that a retroactive SSI check is not counted as a resource for three months beyond the month in which it is received. A title II retroactive check is considered to be unearned income in determining the applicable monthly benefit amount, and is considered a resource if it is retained in months thereafter.

##### *House bill*

Provides that SSI and title II retroactive benefit payments may not be considered as a resource for a period of 12 months from the date the payment is received. Effective October 1, 1984.

##### *Senate amendment*

No provision.

##### *Conference agreement*

The conference agreement follows the House bill with an amendment limiting the exclusion to six months after the month in which the SSI or title II retroactive benefit is received.

## 5. Adjustments in SSI and OASDI Benefits on Account of Retroactive Benefit Payments

### *Present law*

The SSI statute contains provisions aimed at ensuring that an individual's entitlement under the Old-Age, Survivors, and Disability Insurance (OASDI) and Supplemental Security Income (SSI) programs do not result in windfall benefits. Under present law, OASDI benefits that are paid retroactively following the initial determination of eligibility are reduced by the amount of any excess SSI benefits that have been paid because the OASDI benefits have been received in a lump sum rather than in the months when regularly payable.

### *House bill*

No provision.

### *Senate amendment*

Amends the present law requirement to allow the adjustment of benefits in additional situations:

(1) in the case where retroactive OASDI benefits are paid before the SSI benefits, but for the same period, the retroactive SSI amount otherwise payable would be reduced by the amount that would not have been paid had OASDI been paid when regularly due;

(2) the provision would allow for an adjustment of SSI and OASDI benefits which result from either an initial determination of eligibility or a resumption of payments following a period of suspension or termination of those benefits. In cases where retroactive OASDI benefits result from post-eligibility events, such as earnings recomputations, the Secretary would be authorized to adjust those benefits when it is administratively feasible; and

(3) present law would be amended to coordinate the benefit adjustment provision with the SSI retrospective accounting system. Under present law, it is possible that the two-month lag in counting OASDI income for purposes of determining the SSI benefit amount can result in adjustment for less than the full retroactive period. The proposed change would make it possible to adjust benefits paid for the entire retroactive period. The provision would apply to retroactive benefits (either OASDI or SSI) payable beginning 7 months after enactment.

### *Conference agreement*

The conference agreement follows the Senate amendment.

## 6. Exclusion From Income of Alaska Bonus Payment

### *Present law*

An amendment to the SSI statute in 1975 provided for the exclusion from countable income of the Alaska "longevity bonus." This exclusion is defined in the SSI law as a monthly payment made by a State under a program established prior to July 1, 1973, if eligibility for the payment is not based on need and is based solely on attainment of age 65 and duration of residence in the State. As the

result of an Alaska State Supreme Court decision, Alaska enacted a revision that reduces the residency requirement from 25 years to one year.

The bonus payment is presently \$250 monthly per person.

*House bill*

No provision.

*Senate amendment*

The conference agreement provides for the continual exclusion from countable income of Alaska's longevity bonuses, even though a change was made in the bonus program to conform it with the Supreme Court decision which may disqualify the program as not having been established before July 1, 1973. Effective on enactment.

*Conference agreement*

The conference agreement follows the Senate amendment with the modification that continued disregard of the Alaska bonus would apply only to those individuals who, prior to October 1, 1985, meet the 25-year residency requirement of eligibility for the Alaska bonus as it was in effect prior to the recent amendments mandated by the courts. This will avoid an abrupt cut-off for those individuals who have been receiving this disregard for many years or who had, for many years, reason to expect that the disregard would be available.

## **PART 2.—IMPROVEMENTS IN AID TO FAMILIES WITH DEPENDENT CHILDREN (AFDC) PROGRAM**

### **1. Gross Income Limitation**

*Present law*

Eligibility for AFDC is limited to families with gross incomes (income before application of any disregards) at or below 150 percent of the State's standard of need.

*House bill*

Sets a new gross income limit of 130% of poverty, updated annually. Effective October 1, 1984.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill with the following modification: the gross income limitation is increased to 185 percent of the State standard of need.

### **2. Work Expense Deduction**

*Present law*

States are required to disregard to first \$75 of monthly earnings for full-time employment (in lieu of itemized work expenses). A



lower work expense deduction must be established for part-time workers.

*House bill*

States would be required to disregard the first \$75 of monthly earnings for full- and part-time employment. Effective October 1, 1984.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

### 3. Continuation of \$30 Disregard From Earned Income

*Present law*

States are required to disregard the following amount of a recipient's monthly earnings, in the following order: (1) the first \$75 (less for part-time work); (2) child care costs up to \$160 per child; and (3) plus one-third of earnings not previously disregarded. The \$30 plus one-third disregard is allowed only during the first 4 consecutive months in which a recipient has earnings in excess of the standard work expense (\$75) and child care disregards.

*House bill*

Requires the application of the \$30 disregard to earnings in months after the first four months in which the \$30 plus one-third disregarded is applied. The one-third disregard would continue to be limited to four months. Effective October 1, 1984.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill with the following modification: the \$30 disregard would be limited to 12 months. The one-third disregard would continue to be limited to 4 months.

### 4. Work Transition Allowance

*Present law*

In determining benefits for AFDC recipients, States must disregard \$30 plus one-third of monthly earnings, after also disregarding specified amounts for work expenses and child care. The \$30 plus one-third disregard may be applied only for four months.

If a family loses eligibility for AFDC because of the four-month limit on the \$30 plus one-third disregard, it also simultaneously loses categorical eligibility for medicaid. Categorical medicaid eligibility is retained after the loss of AFDC eligibility only in the case of families whose earnings increase to the point that they would be ineligible even if the \$30 plus one-third disregard were applied. These families are eligible for medicaid for four additional months.



*House bill*

Establishes an AFDC "work transition allowance" payable to recipients who lose AFDC benefits because they are no longer eligible for the \$30 plus one-third disregard of earnings. The allowance is equal to \$10 a month for a period of nine months after the family loses AFDC. States may continue the allowance for an additional six months in the case of a family that would be eligible for AFDC if the \$30 plus one-third disregard were applied. The allowances are eligible for Federal matching on the same basis as regular AFDC benefits, and recipients of the allowances are considered recipients of AFDC for all purposes of the Social Security Act, including medicaid.

Families eligible for the allowance include those who lose eligibility for regular AFDC benefits in the months following enactment, as well as those who have previously been terminated from the AFDC rolls because of the loss of the \$30 plus one-third disregard. Previously terminated families would be limited to those who would otherwise have been eligible for AFDC if the \$30 plus one-third disregard had been applied, and who make application for the allowance by October 1, 1985. Effective October 1, 1984.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill with the following modifications: (1) the \$10 monthly AFDC check is eliminated; and (2) families who have been previously terminated from AFDC due to the loss of the \$30 plus one-third disregard are eligible for the work transition status and Medicaid but must disclose any private health insurance coverage at the time of application, apply within six months from the date regulations become final, and must have been continuously eligible for AFDC if the \$30 and one-third disregard were applied. The work transition provision requires States to provide 9 months of Medicaid coverage to families who lose eligibility for AFDC due to the termination of the one-third disregard. States have the option of extending this coverage for an additional 6 months in the case of a family that would be eligible for AFDC if the \$30 plus one-third disregard were applied.

## 5. Clarification of Earned Income Provisions

*Present law*

The AFDC statute was amended in 1981 to change the way in which earned income is counted for purposes of determining eligibility and benefit amounts. As amended by Public Law 97-35, the law currently requires the States to disregard the following amounts of a family's earned income—

Eligibility Determination: (1) the first \$75 of monthly earnings for full-time employment; and (2) the cost of care for a child (or incapacitated adult), up to \$160 per child per month.

Benefit Calculation: (1) the first \$75 of monthly earnings for full-time employment; (2) child care cost up to \$160 per child per month; and (3) one-third of earnings not previously disregarded.

The \$30 plus one-third disregard is allowed only during the first 4 consecutive months in which a recipient has earnings in excess of standard work expense and child care disregards.

Courts in several States have been asked to interpret whether the term "earned income" refers to the gross amount earned by an individual before deductions are taken (for income taxes, insurance, FICA, support payments, or other items, regardless of whether the deduction is voluntary or involuntary), or whether the term refers to net earnings, after such deductions are taken. Regulations issued by the Department of Health and Human Services require that the term be interpreted as referring to gross earnings. The 3rd and 4th Circuit Courts of Appeal have ruled in the Department's favor. However, the 9th Circuit Court of Appeals has ruled that the term must be interpreted as referring to net earnings. The Supreme Court recently agreed to hear the case.

#### *House bill*

Amends the AFDC statute to make clear that the term "earned income" means the gross amount of earnings, prior to the taking of payroll or other deductions. Effective on enactment.

#### *Senate amendment*

Same provision with technical differences.

#### *Conference agreement*

The conference agreement follows the Senate amendment.

### **6. Exclusion of Burial Plots, Funeral Agreements, and Certain Property From Resources Test**

#### *Present law*

There is no exclusion in the AFDC resource test for burial plots or funeral agreements. Real property is considered as a resource available to the family both when actually available and when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make the sum available for support and maintenance.

#### *House bill*

Exempt from the AFDC resource limitation, one burial plot per family member, funeral agreements, and real property which the household is making a good faith effort to sell at a reasonable price and which has not been sold. Effective October 1, 1984.

#### *Senate amendment*

No provision.

#### *Conference agreement*

The conference agreement follows the House bill with a modification establishing an AFDC policy on real property that is similar to SSI policy. The managers intend that by regulation, real property

which the family is making a good faith effort to sell would be exempt for six months (with State option for an additional 3 months) but only if the family agrees to use the proceeds from the sale to repay the AFDC paid. Any remaining proceeds would be considered a resource.

## **7. Federal Matching for CWEP Expenses**

### *Present law*

The AFDC statute permits States to operate community work experience programs (CWEP) in which AFDC recipients perform community work as a condition of eligibility. Persons who are required to register for the work incentive (WIN) program would also generally be required to participate in community work experience programs.

States must provide reimbursement to a CWEP participant for transportation and other costs that the State determines are necessary and due to participation in CWEP. For purposes of Federal matching, this amount is limited to \$25 a month.

### *House bill*

Requires States to reimburse an AFDC recipient for costs incurred by him where the State is unable to provide directly any necessary transportation and day care services. (Day care costs may be reimbursed up to a limit of \$160 per month per child.) These expenditures are eligible for Federal matching as administrative costs. Effective October 1, 1984.

### *Senate amendment*

No provision.

### *Conference agreement*

The conference agreement follows the House bill but limits reimbursement of day care expenses to those determined by the State agency to be reasonable, necessary and cost effective. In no case could the reimbursement exceed \$160 per month per child.

## **8. Retrospective Budgeting and Monthly Reporting Made Optional**

### *Present law*

States are required to determine monthly benefits retrospectively, on the basis of the actual income of the previous month. Eligibility is determined prospectively, on the basis of the current month's circumstances. States must require each family to report monthly on income, family composition, etc. The Secretary may waive the monthly reporting requirement for specified classes of recipients, upon a showing by the State that the administrative cost of monthly reporting for such recipients is not worthwhile. Retrospective budgeting may not be waived.

### *House bill*

Allows rather than requires the States to use a retrospective budgeting and monthly reporting system. Provides Federal matching for State supplements paid under a retrospective budgeting and



monthly reporting system, if the State elects to pay such supplements when the system cannot respond promptly to changes in immediate needs. Permits the Secretary to grant waivers to promote compatibility between the AFDC and food stamp monthly reporting and retrospective budgeting systems if a State chooses to operate such a system in AFDC. Prohibits the imposition of any penalty on a State for past failure to comply with the retrospective budgeting and monthly reporting system. Effective October 1, 1984.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill with the following modifications: (1) retrospective budgeting is mandatory for cases filing a monthly report; (2) monthly reporting is used only where cost effective, but is generally required for cases with a recent work history and earned income; (3) the Secretary of Health and Human Services is authorized to grant waivers to promote compatibility between the AFDC and food stamp monthly reporting and retrospective budgeting systems (approved waivers should result in no net cost to the Federal government); and (4) the provision authorizing Federal matching for State supplements paid under a retrospective budgeting and monthly reporting system is deleted.

## 9. Treatment of Earned Income Tax Credit

*Present law*

Present law provides an earned income tax credit (EITC) for the working poor. Eligible employees may elect to receive their EITC in the form of advance payments added to their paychecks, or may apply for a refund at the end of the year.

In determining earned income for AFDC, the State must assume that an individual is receiving on an advance monthly basis the EITC payment that he or she is eligible to receive, regardless of whether the person has applied for or received the advance payment, if it is determined that the individual will be eligible for the EITC in the tax year.

*House bill*

Requires States to disregard the earned income tax credit (EITC) from countable income in determining AFDC eligibility and benefit amounts. Effective October 1, 1984.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill modified to require that the earned income tax credit is counted only when actually received.

## 10. Demonstration Projects Testing One-Stop Service Delivery Systems

### *Present law*

No provision.

### *House bill*

Authorizes the appropriation of \$8 million to the Secretary of HHS to make grants to assist in the development and operation of pilot projects to demonstrate ways of improving service delivery under various human service programs.

From 3 to 5 Federally assisted demonstration projects (including not more than one statewide project) designed to test the effectiveness and efficiency of integrating the delivery of human services would be established. Periodic reports from the Secretary of HHS as to the progress of selected projects and an independent study of all projects at the end of the 3 year period would be required. The Secretary of HHS would be prohibited from conducting or approving any project that would lower or further restrict the benefit levels or income or resource standards, deductions or exclusions provided under any of the programs, or that would delay benefits. Effective October 1, 1984

### *Senate amendment*

No provision.

### *Conference agreement*

The conference agreement follows the House bill. These demonstration projects are not intended to permit participating States to assume Social Security Administration responsibilities for accepting applications, making eligibility determinations, or paying benefits under the SSI program. However, State SSI activities could include providing outreach and referrals, coordinating services, and other ancillary services that are not directly part of the SSI claims taking and adjudication process.

## 11. Demonstration Projects Testing Common AFDC, Medicaid and Food Stamp Rules

### *Present law*

No provision.

### *House bill*

Allows up to five States to establish demonstration projects where AFDC definitions and budgeting procedures are conformed with the Medicaid or Food Stamp programs, or both. The Secretary would be prohibited from conducting or approving any project that would lower or further restrict the benefit levels or income or resource standards, deductions or exclusions provided under any of the programs, or that would delay the provision of benefits. A project may last up to five years. Effective October 1, 1984.

### *Senate amendment*

No provision.



*Conference agreement*

The conference agreement follows the Senate amendment.

**12. Exempt Pregnant Women From Work Requirements***Present law*

All applicants and recipients of AFDC must register for employment and training unless they are: children under age 16 or in school full time; ill, incapacitated, or elderly; too far from a project to participate; or needed at home to care for a person who is ill; a caretaker relative providing care on a substantially full-time basis for a child under age 6; employed at least 30 hours a week; or the parent of a child if the other parent is required to register. There is no special exemption from the requirement for pregnancy.

*House bill*

Adds to those who are exempted from the work registration requirement any individual who is the third trimester of pregnancy. Effective October 1, 1984.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

**13. Treatment of Child Support Payments for CWEP Participation***Present law*

Participants in CWEP may not be required to work in excess of the number of hours which, when multiplied by the greater of the Federal or the applicable State minimum wage, equals the amount of aid payable to the family.

*House bill*

Excludes that portion of the AFDC payment which is offset by child support collections when computing the maximum number of hours an AFDC recipient may be required to participate in CWEP. Effective October 1, 1984.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the Senate amendment.

**14. Recalculate Lump-Sum Income in Certain Circumstances***Present law*

Lump-sum income received in a month is considered available as income in the month it is received and also in future months. Thus, if such income exceeds the standard of need in the month of receipt, the family is ineligible in that month. In addition, any

amount of the income that exceeds the initial month's need standard is divided by the monthly need standard, and the family is ineligible for aid for the number of months resulting from that calculation. The ineligibility period may be changed only if a life threatening circumstance occurs.

#### *House bill*

Allows States to recalculate the period of ineligibility when: (1) circumstances change in ways that increase a family's financial need; and (2) such recalculation would promote the purposes of the AFDC program. Effective October 1, 1984.

#### *Senate amendment*

No provision.

#### *Conference agreement*

The conference agreement follows the House bill with a modification limiting the recalculation to one or more of the following: (1) an event occurs which, had the family been receiving aid under the State plan, would have changed the amount of aid payable; or (2) the income received has become unavailable to the family for reasons beyond their control; or (3) the family incurs, becomes responsible for and pays medical expenses (as allowed by the State) which offset the lump-sum income. The agreement also clarifies that the lump-sum provision applies to earned and unearned income.

### **15. Waiver of Overpayments When Cost of Collection Would Exceed Amount Due**

#### *Present Law*

States are required to correct overpayments and underpayments. Recovery of overpayments is made from current assistance payments, available income and resources, and, for an individual who no longer receives assistance, through the legal process. In any month when overpayments are being recovered, the AFDC payment, together with the recipient's liquid resources and all income, (without the application of earned income disregards), must equal at least 90 percent of the payment a family without other income would receive.

#### *House bill*

Allows States not to recover an overpayment when as determined by the State agency under regulations prescribed by the Secretary, it can be reasonably assumed that the cost to collect the overpayment will exceed the amount owed. Effective October 1, 1984.

#### *Senate amendment*

No provision.

#### *Conference agreement*

The conference agreement follows the House bill but permits the HHS Secretary to establish limits on the amount of an overpayment that can be waived. It is the understanding of the managers

that these regulations will allow States automatically to waive recoupment of overpayments of less than \$35. States would continue to be required to attempt to recover all other overpayments but could subsequently elect not to pursue the overpayment if the cost to collect it would exceed the amount owed.

## **16. Limit on Recovery of Overpayments When AFDC Recipient Has Excess Assets**

### *Present law*

If, in any month, a recipient's assets exceed the asset limits (currently up to \$1,000), the individual is ineligible for benefits in that month and the entire amount of the benefit paid for that month is subject to recovery.

### *House bill*

Limits the amount of the overpayment which may be recovered in the case of AFDC recipients whose assets exceed limitations to the lesser of: (1) the amount of the benefit paid; or (2) the greatest amount by which the total value of the assets exceeded the dollar asset limitation during the applicable period. Effective October 1, 1984.

### *Senate amendment*

No provision

### *Conference agreement*

The conference agreement follows the Senate amendment.

## **17. Protective Payments**

### *Present law*

States are required to make protective payments, instead of direct cash payments, on behalf of AFDC recipients under certain specified circumstances. Protective payments must be made when there is failure to cooperate in the work incentive (WIN) program or the community work experience program (CWEP) and if a parent fails to assign child support rights or refuses to cooperate with child support enforcement efforts. In these cases, the parent becomes ineligible for AFDC.

### *House bill*

Allows, rather than requires, States to make protective payments in the following circumstances: when an individual is not in compliance with WIN or CWEP requirements, and when the parent is not in compliance with certain child support requirements. The parent would continue to be ineligible for AFDC but could receive the child's payment. Effective October 1, 1984.

### *Senate amendment*

No provision.

### *Conference agreement*

The conference agreement follows the House bill and clarifies that States are permitted to make payments to a parent who fails to comply with the above mentioned procedural requirements but only if, after all reasonable efforts have been made, the State is unable to identify a suitable protective payee, and prolonging the search may prove detrimental to the well-being of the child. The amendment does not change the requirement that individuals who do not meet the procedural requirements are subject to the penalty of being removed from the grant. However, there are circumstances in which welfare agencies, after making all reasonable efforts, have been unable to find responsible protective payees to act on behalf of the AFDC unit and receive the AFDC check.

## **18. Suspension of Error Rate Sanctions**

### *Present law*

Prior to TEFRA (P.L. 97-248), States were required to reduce their AFDC payment error rates from fiscal year 1980 levels, to 4 percent by September 30, 1982. Regulations require the States to achieve one-third progress toward this 4-percent payment error rate goal in fiscal year 1981 and two-thirds progress in fiscal year 1982. The 4-percent goal is the standard for fiscal year 1983. An amendment in TEFRA reduced the 4-percent error rate tolerance level to 3 percent, beginning with fiscal year 1984. States may be sanctioned by being required to repay the Federal Government the Federal cost of improperly paid benefits that exceed these goals. The Secretary may waive sanctions where he determines that a State is unable to reach the required reduction in a given year despite a good faith effort.

Twenty-eight States failed to meet their AFDC target error rates for the fiscal year 1981 quality control review period and have been notified that they are subject to sanctions totaling \$73.6 million unless the Secretary grants a waiver. Sanctions for fiscal year 1981, 1982, and 1983 are estimated by CBO to total \$174 million.

### *House bill*

Provides that prior to October 1, 1985 no action shall be taken to enforce or collect any quality control penalties that may be imposed on a State because of improperly paid benefits, as determined by quality control reviews. This does not absolve States of the obligation. Effective October 1, 1984.

### *Senate amendment*

No provision.



*Conference agreement*

The conference agreement follows the Senate amendment.

## 19. Eligibility Requirements for Aliens

*Present law*

For purposes of eligibility for benefits, legally admitted aliens who apply for benefits after September 30, 1981 are deemed to have the income and resources of their immigration sponsors available for their support for a period of 3 years after their entry into the United States. The provision does not apply to sponsors of aliens who are agencies or organizations, it applies only to individuals. It also does not apply to certain categories of aliens, including refugees.

*House bill*

Makes ineligible for benefits an alien with respect to whom an agency or organization has executed an affidavit of support as a sponsor for the alien's entry into the United States, unless the State agency determines that the sponsoring agency or organization is no longer in existence, or that it does not have the financial ability to meet the alien's needs. The determination would be made by the State agency based upon such criteria as it may specify and upon such documentary evidence as it may require. The same categories of aliens are excluded as provided in present law. Effective October 1, 1984.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

## 20. Information With Respect to Fugitive Felons

*Present law*

States may disclose information concerning ADFC applicants and recipients only for purposes connected with: (1) the administration of the child welfare, WIN, child support, SSI, Medicaid, or title XX social services programs; (2) any investigation, prosecution, or criminal or civil proceedings related to the administration of the program; (3) the administration of any other Federally-assisted program which provides assistance or services based on need; or (4) any audit or similar activity conducted in connection with the ad-



ministration of any such plan or program by an authorized governmental entity.

#### *House bill*

Allows the disclosure to law enforcement officers of the name and current address of any AFDE recipients who are fugitive felons if the agency is given the recipient's social security number and satisfactorily demonstrates that the recipient is a fugitive felon. Effective October 1, 1984.

#### *Senate amendment*

No provision.

#### *Conference agreement*

The conference agreement follows the House bill.

### **21. Payment Schedule for Reimbursement of Back Claims Due to the States**

#### *Present law*

Two laws have recently been enacted with respect to Federal reimbursement for prior-year expenditures under the AFDC, Medicaid and title XX programs.

P.L. 96-272 provided that a claim for a pre-fiscal year 1980 expenditure may not be paid unless it was filed prior to January 1, 1981. (However, the Act also provided that payment may not be denied with respect to any expenditure involving court-ordered retroactive payments or audit exceptions, or adjustments to prior year costs, whenever filed.)

P.L. 97-276, the 1983 continuing resolution, provided that, notwithstanding P.L. 96-272 or a specified U.S. Circuit Court of Appeals decision, no payment could be made prior to fiscal year 1984 for pre-fiscal year 1979 expenditures unless the claim was filed within one year after the fiscal year in which the expenditure occurred. Beginning in fiscal year 1984, any payment required to be reimbursed by a court decision in any case filed prior to September 10, 1982, must be made in accordance with a schedule to be established under the Social Security Act.

There is disagreement as to whether the 1983 continuing resolution had the effect of permanently overriding the provision in P.L. 96-272 that requires reimbursement for any adjustments to prior year costs (and other specified payments), regardless of when they are filed, thereby extinguishing all claims for reimbursement for pre-fiscal year 1979 expenditures unless they were filed within one year after the fiscal year in which they occurred, or were asserted in a case filed prior to September 30, 1982.

#### *House bill*

Establishes the payment schedule called for in P.L. 97-276 with respect to court-ordered reimbursements as follows: for expenditures identified in the U.S. District Court decision *State of Connecticut v. Heckler* and allowed by the Department of HHS prior to enactment of this bill, payment must be made within 30 days after enactment. For other pre-fiscal year 1979 expenditures identified in

that or any other decree in a suit filed prior to September 30, 1982, payment must be made as soon as the expenditure is determined by the Department to be an allowable claim. Effective on enactment.

### *Senate amendment*

Identical provision. Also prohibits reimbursement for pre-fiscal year 1979 claims, whether asserted as an adjustment to prior years costs or otherwise, if not filed by May 15, 1981 (unless they are identified in the above specified court decrees). Effective on enactment.

### *Conference agreement*

The conference agreement follows the House bill.

## **22. Grant Diversion Program**

### *Present law*

AFDC applicants and recipients are required to register for work or training under the work incentive (WIN) program unless they are specifically exempt. States have the option of operating a WIN demonstration program (in lieu of the regular WIN program) which gives them greater flexibility in designing their work and training activities. In addition, they may operate community work experience, employment search, and work supplementation programs. Under a work supplementation program, States may reduce the need standard and/or revise the earned income disregards and use these funds to subsidize jobs for AFDC recipients. The statute limits Federal funding for an AFDC program which includes a work supplementation component and limits the subsidized jobs to those in public or nonprofit organizations.

There is no specific authority to operate grant diversion programs (in which all or part of the AFDC grant is used to supplement wages for jobs provided by public or private employers). These may be operated only under waivers granted by the Secretary.

### *House bill*

Allows States to operate a grant diversion program in all or part of the State. States must enter into contracts with public or private employers in the State under which the employers will provide employment (in the form of on-the-job training or otherwise) for eligible individuals for up to nine months. The payment to each employer with respect to each individual who is employed must be the lesser of: (1) the maximum amount that could have been paid directly to the individual or his family at the time of initial placement on the job, if the individual or family had no income; or (2) 50 percent of the wages paid to the individual for his employment under the program. States are given discretion to determine which employers and job positions are to be included in the program.

To be eligible for the program an individual must be eligible to receive AFDC at the time of initial placement in a job under the program. Individuals employed in the program must be a given employee status. Wages paid under the program are considered

earned income for purposes of any provision of law. For those individuals whose wages otherwise do not make them ineligible for benefits, States are allowed to apply the \$30 plus one-third disregard provision to earnings for the duration of the individual's participation in the program. States would not be subject to the funding limitations that apply to a work supplementation program.

Participants in the program (and their households) are eligible for Medicaid. Effective October 1, 1984.

#### *Senate amendment*

No provision.

#### *Conference agreement*

The conference agreement follows the House bill with modifications. To allow States to operate grant diversion programs, the current work supplementation program would be modified in the following manner: (1) private employers could be used; (2) States would be permitted but not required to offer a \$30 plus  $\frac{1}{3}$  earned income disregard for up to 9 months for participants; (3) federal funding would be limited to the aggregate of 9 months worth of unreduced welfare grants for each participant in the work supplementation program (or less if the person participates for less than 9 months); and (4) a State would be permitted to develop its own method by which AFDC grants are diverted to wages under the grant diversion program and would not be limited to the methods allowed under Section 414(b) (for example, States may choose to divert a grant on an individual case basis or pool the grants of AFDC recipients actually participating in the grant diversion program).

### **23. Premanent Extension of Provisions for Disregarding In-Kind Assistance**

#### *Present law*

##### *SSI*

In determining income, the law provides for excluding any support or maintenance assistance furnished to or on behalf of an individual which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) is based on need for such support or maintenance, including assistance received to assist in meeting the costs of home energy (both heating and cooling), and which is: (a) assistance furnished in-kind by a private nonprofit agency; or (b) assistance furnished by a supplier of home heating oil or gas, or by an entity providing home energy.

##### *AFDC*

The same income exclusions may be applied to the AFDC program at the option of the State.

These are temporary provisions of law.



*House bill*

Repeals the time limitations on these provisions and makes them a permanent part of the law. Effective October 1, 1984.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill but would extend the provisions until October 1, 1987.

## **24. Parents and Siblings of Dependent Child Included in Filing Unit**

*Present law*

There is no requirement in present law that parents and all siblings be included in the AFDC filing unit. Families applying for assistance may exclude from the filing unit certain family members who have income which might reduce the family benefit. In addition, a mother who is a minor may be excluded if she is supported by her parents. However, if she has no income of her own which may be attributed to her child, the child may qualify for assistance as a one-person unit. The income of the minor parent's parents is not considered in determining the eligibility of the child.

*House bill*

No provision.

*Senate amendment*

Requires States to include in the filing unit the parents and all minor siblings living with a dependent child who applies for or receives AFDC. SSI recipients and stepbrothers and stepsisters are excluded from this requirement. In addition, if a minor who is living in the same home as his parents applies for aid as the parent of a needy child, the income of the minor's parents would be counted as available to the filing unit. The rules that would be used in determining the amount of available income would be the same as are currently used in counting the income of stepparents. Effective April 1, 1984.

*Conference agreement*

The conference agreement follows the Senate amendment with the following modification: a monthly disregard of \$50 of child support received by a family is established. The disregard is applied at eligibility determination and benefit calculation. The provision is effective October 1, 1984.

## **25. Households Headed by Minor Parents**

*Present law*

A minor parent who has a child, and who leaves home, may apply for AFDC as a separate family unit. The income of the parents of the minor parent is not presumed to be available to the minor parent, because they are not sharing the household.

*House bill*

No provision.

*Senate amendment*

In the case of a minor parent who is not and has never been married, AFDC may be provided only if the minor parent resides with her parent or legal guardian, unless the State agency determines that: (1) the minor parent has no parent or legal guardian who is living and whose whereabouts are known; (2) the health and safety of the minor parent or the dependent child would be seriously jeopardized if she lived in the same residence with the parent or legal guardian; or (3) the minor parent has lived apart from the parent or legal guardian for a period of at least one year prior to the birth of the child, or before claiming aid, whichever is later.

The State agency would be given authority to make payments to a protective payee with respect to a minor parent affected by the provision, until the individual is no longer considered a minor by the State. Effective April 1, 1984.

*Conference agreement*

The conference agreement follows the House bill.

## 26. CWEP Work for Federal Agencies

*Present law*

States are authorized to conduct community work experience programs (CWEP). Employable recipients may be required to participate in these programs as a condition of eligibility for AFDC.

*House bill*

No provision.

*Senate amendment*

Amends the AFDC statute to make clear that participation in a CWEP program may include work performed for a Federal office or agency. Such work would not be considered to constitute Federal employment, and the State agency would be required to provide appropriate workers' compensation and tort claims protection to each participant. Effective on enactment.

*Conference agreement*

The conference agreement follows the Senate amendment with the following modification: worker's compensation is optional as under the current CWEP law. The agreement makes no change in existing State worker's compensation laws.

## 27. Earned Income of Full-Time Students

*Present law*

The AFDC statute provides that eligibility for benefits is limited to families with gross incomes (income before application of any disregards) at or below 150 percent of the State's standard of need. A provision was included in Public Law 97-377, the Job Training Partnership Act, which amended the gross income limitation to



allow States to disregard the income of an AFDC youth which is derived from a program carried out under that Act, in such amounts and for such period of time (not to exceed six months with respect to earned income) as the Secretary of Health and Human Services may provide in regulations. The earnings of children in school who are not in a JTPA program are counted toward the 150 percent limit.

*House bill*

No provision.

*Senate amendment*

For purposes of applying the gross income limitation, States would be allowed to disregard the income of an AFDC child who is a full-time student, under the same limitation with respect to amounts and periods of time as are applied in the case of youths who participate in a program under the Job Training Partnership Act. Effective on enactment.

*Conference agreement*

The conference agreement follows the Senate amendment but establishes June 1, 1984 as the effective date for the provision.

## 28. Regulatory Initiative on Medical Support

*Present law*

The Child Support Enforcement (CSE) program is a Federal-State partnership under which States are required to have a program which locates absent parents, establishes paternity and obtains and enforces support orders. There is no provision in the child support statute that requires State agencies to undertake efforts to include medical support as part of any child support order.

*House bill*

No provision.

*Senate amendment*

Requires the Secretary of HHS to issue regulations which would require State CSE agencies to petition to court to include medical support as part of the child support order whenever health care coverage is available to the absent parent at a reasonable cost. In addition, the regulation would provide for improved information exchange between the CSE and medicaid agencies on the availability of health insurance coverage. Effective on enactment.

*Conference agreement*

The conference agreement follows the House bill.

## Subtitle C—Implementation of Grace Commission Recommendations

### 1. Income and Eligibility Verification Procedures

#### *Present law*

Under present law, IRS wage information furnished by employers to IRS is available to state welfare agencies for use in their AFDC and food stamp programs, and to the Social Security Administration for administering the SSI program. However, IRS unearned income information (field by a financial institution or corporation with respect to payments to individuals in the form of interest, dividends, etc.) is not available to Federal and State agencies for use in the administration of these programs. Quarterly wage information from the unemployment compensation program is available to State welfare agencies in most States.

#### *House bill*

The House bill authorizes the IRS to disclose return information with respect to unearned income to Federal, State, or local agencies administering AFDC, SSI, Medicaid, food stamps, and the cash assistance programs administered in Puerto Rico, Guam, and the Virgin Islands. Current law restrictions on unauthorized disclosure of confidential information are applied to agencies receiving the information.

Under the House bill, Federal, State or local agencies that are furnished unearned income return information by the IRS are prohibited from taking action thereon to reduce, suspend, terminate, or deny aid or benefits until the agency has taken steps to independently verify the information. The verification must include: (1) verification of the exact amount of the asset or income involved; (2) an evaluation of whether the individual has access to the asset or income involved for his or her own use; and (3) a determination regarding the time frame involved with regard to when the individual actually had the funds in question.

#### *Senate amendment*

The Senate amendment requires, rather than allows, the Secretary of Treasury to disclose unearned income return information upon request of the specified agencies. Disclosure can only be made to agencies that meet the requirements to safeguard this confidential information against disclosure. The Senate amendment contains a provision requiring verification of the unearned income information prior to taking action to reduce or terminate benefits that are similar to the House bill. In addition, the individual must be given notice of the proposed reduction or termination, and an opportunity to refute the information. Further, all applicants for and recipients of benefits under any program must be notified at the time of application, and periodically thereafter, that information verifying their assets and income will be requested and used.

The Senate amendment replaces existing statutory provisions relating to use (for purposes of AFDC) of return and other wage information and use of social security numbers, by adding a new section to the Social Security Act requiring States to have in effect an

income and eligibility verification system for use in administering the AFDC, Medicaid, unemployment compensation, and food stamp programs (and the adult assistance programs in the territories). State agencies must request and make use of (1) wage and other income information available under the Internal Revenue Code; and (2) quarterly wage information. Each State is required to maintain a quarterly wage reporting system, although not necessarily through its unemployment compensation system.

The income and eligibility system requires use of standardized data formats to facilitate exchange of information, for the purpose of identifying and reducing ineligibility and incorrect payments. The requirement for standardized formats is intended to assure easy exchange of information by progress within States, and to facilitate the exchange of information among States. This requirement does not require the use by States of identical systems, but only that each State must be able to provide certain essential eligibility data in a format which can be used by the agencies and jurisdictions with which data exchanges are made. Information exchanged by state agencies is protected against unauthorized disclosure for other purposes.

#### *Conference agreement*

The conference agreement follows the Senate amendment with the following modifications: (1) the effective date of the requirement that States maintain a system of quarterly wage reporting as part of the income and eligibility verification system is delayed until September 30, 1988; (2) the provision regarding verification of IRS unearned income information is broadened to prohibit denial or suspension of benefits until the agency has taken steps to independently verify the information; (3) the amendment includes a provision describing the steps required to independently verify the information; and (4) that only unearned income from the current information file may be disclosed by the IRS.

Because the unemployment compensation program is part of the income verification system, the amendment requires IRS disclosure of wage and unearned income return information to this program. However, the managers expect that the data will be supplied to one agency in each State, and will be shared only with agencies which find it useful. The Conference agreement provides for the State to target the information to those uses most likely to be productive and cost-effective.

Following is a brief outline of what the conferees expect to occur under the unearned income provision.

First, an agency must establish the safeguards against unauthorized disclosure of the information that are required under section 6105 of the Code. These safeguards are also applicable to any other agency to which the information is subsequently disclosed. Once this has been done, the agency may request the unearned income return information. The agency that has requested and received the unearned income return information from the IRS may not deny, terminate, reduce or suspend benefits on the basis of that information alone. First, the agency must independently verify such information as the amount of the asset or income involved, evaluate whether the individual has or had access to the asset or income



for his or her own use, and determine whether the individual actually has or had the asset or income during the relevant period of time.

The agency may use one of two approaches to verify unearned income return information that it has received from IRS. It may contact the financial institution or corporation that submitted the information to the IRS, requesting its cooperation in verifying the information. If the institution verifies the information, the agency must send the individual notice of denial, reduction, suspension, or termination of benefits (whichever is applicable), including information on the right to appeal the action. If the action is not appealed, the agency may proceed to take the appropriate action, based on the verified information.

Alternatively, the agency may contact the individual directly by letter informing him of the information that it has received, and requesting that the individual respond within a specified period. The conferees expect that the agency's letter to the recipient will be unintimidating in tone, and will clearly explain the information that the agency has, and the possible relevance of the information to the individual's eligibility for (and amount of) any past or future benefits. If the individual responds by verifying the information, the agency will take the appropriate case action. If the individual indicates that the information is not correct or is incomplete the agency must obtain evidence (from the individual or institution involved or otherwise) to substantiate any negative case action that it may take. If the individual fails to respond after reasonable efforts to contact him, the agency will take steps to close or deny the case on the basis of the individual's failure to cooperate.

In all cases involving reduction, suspension, or termination of benefits, the recipient must be sent notice of the action to be taken, including information on the right to appeal and opportunity for a hearing.

## **2. Collection and Deposit of Payments to Executive Agencies**

### *Present law*

Under present law, Federal agencies may collect nontax debt in a variety of ways. The Department of the Treasury collects a large proportion of nontax receipts through accelerated systems, including the Treasury Federal Communications System, automatic account withdrawals, and lockboxes. However, in 1983 \$55 billion in nontax receipts was collected by means other than accelerated systems.

### *House bill*

Authorizes the Secretary of the Treasury to prescribe the mechanisms to be employed by Federal agencies to collect nontax debts and the time frames for deposit of funds. Generally reduces from 30 days to three days the statutory period for timely deposit of funds by custodians. Requires that agencies adopt collection and deposit methods as prescribed by the Secretary.

Agencies not complying with the regulations will be assessed a charge equal to the cost of noncompliance to the general fund. Any such charges will be deposited into a Treasury Cash Management

Improvements Fund to be used for developing and implementing cash management initiatives.

*Senate amendment*

Same provision, with technical differences.

*Conference agreement*

The conference agreement follows the Senate provision.

### 3. Collection of Nontax Debts Owed to Federal Agencies

*Present law*

Present law does not provide authority for the IRS to offset tax refunds against nontax debts owed to Federal agencies. However, tax refunds must be offset against past-due child and spousal support payments in the case of families receiving AFDC payments.

*House bill*

No provision.

*Senate amendment*

Provides that the amount of any IRS refund be reduced by the amount of certified nontax debt to the Federal government. Federal agencies must certify to the Secretary of the Treasury that specific attempts to notify the debtor have been made, and that the debtor does not dispute the debt, has not begun to repay the debt, and exhibits no reasonable intention to repay the debt. The agency must have entered into an agreement with the Secretary providing for the transmission of certified debt information before transmission occurs.

Authorizes the Secretary to test the offset procedures with selected programs before full implementation. Gives the Secretary authority to prescribe terms of agreements with other agencies and the format for transmitting information.

AFDC child support obligations would be subject to offset before other Federal debts. Excludes from offset beneficiary debts under the OASDI programs.

*Conference agreement*

The conference agreement follows the Senate amendment.

### Subtitle D—Technical Corrections

Subtitle D contains a number of minor technical amendments to the Social Security Act and the Internal Revenue Code, to correct clerical and other minor errors either resulting from the Social Security Amendments of 1983, or already existing in those acts. Most were contained in the House bill, and were accepted as part of the conference agreement. Only the following two provisions require additional explanation.



## 1. Codification of the Rowan Decision

### *Present law*

The Social Security Amendments of 1983 provided that, with the exception of the value of certain meals and lodging provided for the convenience of the employer, the determination of whether or not amounts are includible in the social security and FUTA wage bases is to be made without regard to whether such amounts are treated in regulations as wages for income tax withholding purposes. This provision thus prevents the application to compensation, other meals and lodging, of the Supreme Court's reasoning in *Rowan Companies, Inc. v. United States*, 452 U.S. 247 (1981). In this case, the Supreme Court held that, because the treatment of certain employer meals and lodging, excluded from gross income under section 119, for income tax withholding and for FICA purposes was not explicitly dealt with in the statutes governing these provisions, Treasury regulations defining wages for purposes of these two provisions had to be consistent. Thus, because one Treasury regulation excluded from wages for income tax withholding purposes the value of meals and lodging excluded from gross income under section 119, another regulation including these amounts in wages for FICA purposes was held to be invalid.

The provision in the Amendments applies to remuneration paid after December 31, 1983, for FICA and social security benefit purposes and to remuneration paid after December 31, 1984, for FUTA purposes. Thus, it is possible that this provision could be cited as demonstrating Congressional intent that the reasoning of the *Rowan* decision should generally apply before these dates to types of remuneration other than meals and lodging excluded under section 119, e.g., to contributions under a salary reduction agreement to tax-sheltered annuities (sec. 403(b)). These contributions have been held by the Treasury Department to be taxable for FICA purposes (Revenue Ruling 65-208) even though they are exempt by regulation from income tax withholding.

### *House bill*

The effective date of the provisions overriding the *Rowan* decision is clarified so that the provision applies for all purposes, other than the treatment of certain employer-provided meals and lodging, both on or before March 4, 1983, and to remuneration paid on or before March 4, 1983, which the employer treated as wages when paid.

### *Senate amendment*

No provisions.

### *Conference agreement*

The conference agreement follows the House bill the conferees intend that the determination of whether an employer treated remuneration as wages when paid will be made on the basis of the interpretations reflected in sec. 3.02 of Rev. Proc. 78-35, 1978-2 C.B. 536 (relating to section 530 of the Revenue Act of 1978). In the event that FICA taxes are withheld or employment tax returns are filed as a result of an audit of prior periods by the IRS, the employ-

er will still be considered to have treated the remuneration as wages when paid. Thus, the conferees do not accept and do not intend to adopt the contrary holding of *Ridgewell's, Inc. v. United States*, 655 F. 2d 1098 (Ct. Cl., 1981).

## **2. Social Security Treatment of Pickups Under State and Local Retirement Plans**

### *Present law*

Prior to the Social Security Amendments of 1983, certain employer payments ("pickups") of employee contributions under a State or local retirement plan were treated as wages for social security and unemployment tax purposes only if the payments were made under a salary reduction arrangement. Under the Amendments, all such employer payments are treated as wages.

### *House bill*

The House bill provides that employer pickups are wages, for social security and unemployment tax purposes, only if the pickup is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise).

### *Senate amendment*

The Senate amendment is the same as the House bill.

### *Conference agreement*

The conference agreement follows the House bill and the Senate amendment. The conferees intend that the term salary reduction agreement also includes any salary reduction arrangement, regardless of whether there is approval or choice of participation by individual employees or whether such approval or choice is mandated by State statute.

## **Subtitle E—Trade Adjustment Assistance (Trade Act of 1974) Provisions**

### **1. Limitations on Trade Readjustment Allowances**

#### *Present law*

Under section 233(a)(3) of the Trade Act of 1974, the 26 weeks of additional trade readjustment allowances (TRA) that an eligible worker may receive while in training can be collected only during the 26 weeks immediately following exhaustion of entitlement to basic TRA.

#### *House bill*

Amends section 233(a)(3) of the Trade Act upon enactment to enable workers to collect the extra 26 weeks of TRA beginning with the first week the worker enters training if that training has not been approved until after the last week of entitlement to basic TRA benefits.

#### *Senate amendment*

No provision.

Finder's Aid  
P.L. 98-378 (98 Stat. 1305) Approved August 16, 1984  
"Child Support Enforcement Amendments of 1984"

<u>Subject</u>	<u>S.S. Act Section</u>	<u>P.L. Section</u>	<u>98 Stat.</u>	<u>H. Rep. 98-527</u>	<u>S. Rep. 98-387</u>	<u>H.C. Rep. 98-925</u>
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Public Law 98-378  
98th Congress

An Act

To amend part D of title IV of the Social Security Act to assure, through mandatory income withholding, incentive payments to States, and other improvements in the child support enforcement program, that all children in the United States who are in need of assistance in securing financial support from their parents will receive such assistance regardless of their circumstances, and for other purposes.

Aug. 16, 1984  
[H.R. 4325]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Child Support  
Enforcement  
Amendments of  
1984.  
42 USC 1305  
note.

SHORT TITLE; TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Child Support Enforcement Amendments of 1984".

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- Sec. 1. Short title; table of contents.
- Sec. 2. Purpose of the program.
- Sec. 3. Improved child support enforcement through required State laws and procedures.
- Sec. 4. Federal matching of administrative costs.
- Sec. 5. Federal incentive payments.
- Sec. 6. 90-percent matching for automated management systems used in income withholding and other required procedures.
- Sec. 7. Continuation of support enforcement for AFDC recipients whose benefits are being terminated.
- Sec. 8. Special project grants to promote improvements in interstate enforcement.
- Sec. 9. Periodic review of effectiveness of State programs; modification of penalty.
- Sec. 10. Extension of section 1115 demonstration authority to child support enforcement program.
- Sec. 11. Child support enforcement for certain children in foster care.
- Sec. 12. Enforcement with respect to both child and spousal support.
- Sec. 13. Modifications in content of annual report of the Secretary.
- Sec. 14. Requirement that availability of child support enforcement services be publicized.
- Sec. 15. State Commissions on child support.
- Sec. 16. Inclusion of medical support in child support orders.
- Sec. 17. Increased availability of Federal parent locator service to State agencies.
- Sec. 18. State guidelines for child support awards.
- Sec. 19. Availability of social security numbers for child support enforcement purposes.
- Sec. 20. Extension of eligibility under title XIX when support collection results in termination of AFDC eligibility.
- Sec. 21. Collection of past-due support from Federal tax refunds.
- Sec. 22. Wisconsin child support initiative.
- Sec. 23. Sense of the Congress that State and local governments should focus on the problems of child custody, child support, and related domestic issues.

PURPOSE OF THE PROGRAM

SEC. 2. Section 451 of the Social Security Act is amended by striking out "and obtaining child and spousal support," and inserting in lieu thereof "obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this 42 USC 651.

42 USC 601. part to all children (whether or not eligible for aid under part A) for whom such assistance is requested.”

IMPROVED CHILD SUPPORT ENFORCEMENT THROUGH REQUIRED STATE  
LAWS AND PROCEDURES

42 USC 654. SEC. 3. (a) Section 454 of the Social Security Act is amended—  
 (1) by striking out “and” at the end of paragraph (18);  
 (2) by striking out the period at the end of paragraph (19) and inserting in lieu thereof “; and”; and  
 (3) by adding after paragraph (19) the following new paragraph:

“(20) provide, to the extent required by section 466, that the State (A) shall have in effect all of the laws to improve child support enforcement effectiveness which are referred to in that section, and (B) shall implement the procedures which are prescribed in or pursuant to such laws.”

(b) Part D of title IV of such Act is further amended by adding at the end thereof the following new section:

“REQUIREMENT OF STATUTORILY PRESCRIBED PROCEDURES TO IMPROVE  
EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT

42 USC 666.  
*Supra.*

“SEC. 466. (a) In order to satisfy section 454(20)(A), each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part:

“(1) Procedures described in subsection (b) for the withholding from income of amounts payable as support.

“(2) Procedures under which expedited processes (determined in accordance with regulations of the Secretary) are in effect under the State judicial system or under State administrative processes (A) for obtaining and enforcing support orders, and (B) at the option of the State, for establishing paternity. The Secretary may waive the provisions of this paragraph with respect to one or more political subdivisions within the State on the basis of the effectiveness and timeliness of support order issuance and enforcement within the political subdivision (in accordance with the general rule for exemptions under subsection (d)).

“(3) Procedures under which the State child support enforcement agency shall request, and the State shall provide, that for the purpose of enforcing a support order under any State plan approved under this part—

“(A) any refund of State income tax which would otherwise be payable to an absent parent will be reduced, after notice has been sent to that absent parent of the proposed reduction and the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State), by the amount of any overdue support owed by such absent parent;

“(B) the amount by which such refund is reduced shall be distributed in accordance with section 457 (b)(4) or (d)(3) in the case of overdue support assigned to a State pursuant to section 402(a)(26) or 471(a)(17), or, in the case of overdue support which a State has agreed to collect under section 454(6), shall be distributed, after deduction of any fees

*Ante*, p. 1145.  
*Post*, p. 1317.

42 USC 602.  
*Post*, p. 1318.

*Post*, pp. 1310,  
1319, 1324.  
42 USC 654.



imposed by the State to cover the costs of collection, to the child or parent to whom such support is owed; and

“(C) notice of the absent parent’s social security account number (or numbers, if he has more than one such number) and home address shall be furnished to the State agency requesting the refund offset, and to the State agency enforcing the order.

“(4) Procedures under which liens are imposed against real and personal property for amounts of overdue support owed by an absent parent who resides or owns property in the State.

“(5) Procedures which permit the establishment of the pater-  
nity of any child at any time prior to such child’s eighteenth birthday.

“(6) Procedures which require that an absent parent give security, post a bond, or give some other guarantee to secure payment of overdue support, after notice has been sent to such absent parent of the proposed action and of the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State).

“(7) Procedures by which information regarding the amount of overdue support owed by an absent parent residing in the State will be made available to any consumer reporting agency (as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f))) upon the request of such agency; except that (A) if the amount of the overdue support involved in any case is less than \$1,000, information regarding such amount shall be made available only at the option of the State, (B) any information with respect to an absent parent shall be made available under such procedures only after notice has been sent to such absent parent of the proposed action, and such absent parent has been given a reasonable opportunity to contest the accuracy of such information (and after full compliance with all procedural due process requirements of the State), and (C) a fee for furnishing such information, in an amount not exceeding the actual cost thereof, may be imposed on the requesting agency by the State.

“(8) Procedures under which all child support orders which are issued or modified in the State will include provision for withholding from wages, in order to assure that withholding as a means of collecting child support is available if arrearages occur without the necessity of filing application for services under this part.

Notwithstanding section 454(20)(B), the procedures which are required under paragraphs (3), (4), (6), and (7) need not be used or applied in cases where the State determines (using guidelines which are generally available within the State and which take into account the payment record of the absent parent, the availability of other remedies, and other relevant considerations) that such use or application would not carry out the purposes of this part or would be otherwise inappropriate in the circumstances.

*Ante*, p. 1306.

“(b) The procedures referred to in subsection (a)(1) (relating to the withholding from income of amounts payable as support) must provide for the following:

Withholding of income.

“(1) In the case of each absent parent against whom a support order is or has been issued or modified in the State, and is being enforced under the State plan, so much of such parent’s wages (as defined by the State for purposes of this section) must be withheld, in accordance with the succeeding provisions of this



42 USC 503.

42 USC 601.

subsection, as is necessary to comply with the order and provide for the payment of any fee to the employer which may be required under paragraph (6)(A), up to the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)). If there are arrearages to be collected, amounts withheld to satisfy such arrearages, when added to the amounts withheld to pay current support and provide for the fee, may not exceed the limit permitted under such section 303(b), but the State need not withhold up to the maximum amount permitted under such section in order to satisfy arrearages.

“(2) Such withholding must be provided without the necessity of any application therefor in the case of a child (whether or not eligible for aid under part A) with respect to whom services are already being provided under the State plan under this part, and must be provided in accordance with this subsection on the basis of an application for services under the State plan in the case of any other child in whose behalf a support order has been issued or modified in the State. In either case such withholding must occur without the need for any amendment to the support order involved or for any further action (other than those actions required under this part) by the court or other entity which issued such order.

“(3) An absent parent shall become subject to such withholding, and the advance notice required under paragraph (4) shall be given, on the earliest of—

“(A) the date on which the payments which the absent parent has failed to make under such order are at least equal to the support payable for one month,

“(B) the date as of which the absent parent requests that such withholding begin, or

“(C) such earlier date as the State may select.

“(4)(A) Such withholding must be carried out in full compliance with all procedural due process requirements of the State, and (subject to subparagraph (B)) the State must send advance notice to each absent parent to whom paragraph (1) applies regarding the proposed withholding and the procedures such absent parent should follow if he or she desires to contest such withholding on the grounds that withholding (including the amount to be withheld) is not proper in the case involved because of mistakes of fact. If the absent parent contests such withholding on those grounds, the State shall determine whether such withholding will actually occur, shall (within no more than 45 days after the provision of such advance notice) inform such parent of whether or not withholding will occur and (if so) of the date on which it is to begin, and shall furnish such parent with the information contained in any notice given to the employer under paragraph (6)(A) with respect to such withholding.

“(B) The requirement of advance notice set forth in the first sentence of subparagraph (A) shall not apply in the case of any State which has a system of income withholding for child support purposes in effect on the date of the enactment of this section if such system provides on that date, and continues to provide, such procedures as may be necessary to meet the procedural due process requirements of State law.

“(5) Such withholding must be administered by a public agency designated by the State, and the amounts withheld must be expeditiously distributed by the State or such agency in accordance with section 457 under procedures (specified by the State) adequate to document payments of support and to track and monitor such payments, except that the State may establish or permit the establishment of alternative procedures for the collection and distribution of such amounts (under the supervision of such public agency) otherwise than through such public agency so long as the entity making such collection and distribution is publicly accountable for its actions taken in carrying out such procedures, and so long as such procedures will assure prompt distribution, provide for the keeping of adequate records to document payments of support, and permit the tracking and monitoring of such payments.

42 USC 657.

“(6)(A)(i) The employer of any absent parent to whom paragraph (1) applies, upon being given notice as described in clause (ii), must be required to withhold from such absent parent's wages the amount specified by such notice (which may include a fee, established by the State, to be paid to the employer unless waived by such employer) and pay such amount (after deducting and retaining any portion thereof which represents the fee so established) to the appropriate agency (or other entity authorized to collect the amounts withheld under the alternative procedures described in paragraph (5)) for distribution in accordance with section 457.

“(ii) The notice given to the employer shall contain only such information as may be necessary for the employer to comply with the withholding order.

“(B) Methods must be established by the State to simplify the withholding process for employers to the greatest extent possible, including permitting any employer to combine all withheld amounts into a single payment to each appropriate agency or entity (with the portion thereof which is attributable to each individual employee being separately designated).

“(C) The employer must be held liable to the State for any amount which such employer fails to withhold from wages due an employee following receipt by such employer of proper notice under subparagraph (A), but such employer shall not be required to vary the normal pay and disbursement cycles in order to comply with this paragraph.

“(D) Provision must be made for the imposition of a fine against any employer who discharges from employment, refuses to employ, or takes disciplinary action against any absent parent subject to wage withholding required by this subsection because of the existence of such withholding and the obligations or additional obligations which it imposes upon the employer.

“(7) Support collection under this subsection must be given priority over any other legal process under State law against the same wages.

“(8) The State may take such actions as may be necessary to extend its system of withholding under this subsection so that such system will include withholding from forms of income other than wages, in order to assure that child support owed by absent parents in the State will be collected without regard to the types of such absent parents' income or the nature of their income-producing activities.

“(9) The State must extend its withholding system under this subsection so that such system will include withholding from income derived within such State in cases where the applicable support orders were issued in other States, in order to assure that child support owed by absent parents in such State or any other State will be collected without regard to the residence of the child for whom the support is payable or of such child’s custodial parent.

“(10) Provision must be made for terminating withholding.

“(c) Any State may at its option, under its plan approved under section 454, establish procedures under which support payments under this part will be made through the State agency or other entity which administers the State’s income withholding system in any case where either the absent parent or the custodial parent requests it, even though no arrearages in child support payments are involved and no income withholding procedures have been instituted; but in any such case an annual fee for handling and processing such payments, in an amount not exceeding the actual costs incurred by the State in connection therewith or \$25, whichever is less, shall be imposed on the requesting parent by the State.

“(d) If a State demonstrates to the satisfaction of the Secretary, through the presentation to the Secretary of such data pertaining to caseloads, processing times, administrative costs, and average support collections, and such other data or estimates as the Secretary may specify, that the enactment of any law or the use of any procedure or procedures required by or pursuant to this section will not increase the effectiveness and efficiency of the State child support enforcement program, the Secretary may exempt the State, subject to the Secretary’s continuing review and to termination of the exemption should circumstances change, from the requirement to enact the law or use the procedure or procedures involved.

“(e) For purposes of this section, the term ‘overdue support’ means the amount of a delinquency pursuant to an obligation determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a minor child which is owed to or on behalf of such child, or for support and maintenance of the absent parent’s spouse (or former spouse) with whom the child is living if and to the extent that spousal support (with respect to such spouse or former spouse) would be included for purposes of paragraph (4) or (6) of section 454. At the option of the State, overdue support may include amounts which otherwise meet the definition in the first sentence of this subsection but which are owed to or on behalf of a child who is not a minor child. The option to include support owed to children who are not minors shall apply independently to each procedure specified under this section.”

(c) Section 454(6)(B) of such Act is amended to read as follows: “(B) an application fee for furnishing such services shall be imposed, which shall be paid by the individual applying for such services, or recovered from the absent parent, or paid by the State out of its own funds (the payment of which from State funds shall not be considered as an administrative cost of the State for the operation of the plan, and shall be considered income to the program), the amount of which (i) will not exceed \$25 (or such higher or lower amount (which shall be uniform for all States) as the Secretary may determine to be appropriate for any fiscal year to reflect increases or decreases in

Optional  
payment  
procedure.  
42 USC 654.

Exemption.



administrative costs), and (ii) may vary among such individuals on the basis of ability to pay (as determined by the State), and”.

(d) Section 454 of such Act (as amended by subsection (a) of this section) is further amended—

*Ante*, p. 1306.

(1) by striking out “and” at the end of paragraph (19);

(2) by striking out the period at the end of paragraph (20) and inserting in lieu thereof “; and”; and

(3) by adding after paragraph (20) the following new paragraph:

“(21)(A) at the option of the State, impose a late payment fee on all overdue support (as defined in section 466(e)) under any obligation being enforced under this part, in an amount equal to a uniform percentage determined by the State (not less than 3 percent nor more than 6 percent) of the overdue support, which shall be payable by the absent parent owing the overdue support; and

*Ante*, p. 1306.

“(B) assure that the fee will be collected in addition to, and only after full payment of, the overdue support, and that the imposition of the late payment fee shall not directly or indirectly result in a decrease in the amount of the support which is paid to the child (or spouse) to whom, or on whose behalf, it is owed.”.

(e) Section 454(5) of such Act is amended by inserting after “directly to the family” the following: “, and the individual will be notified at least annually of the amount of the support payments collected;”.

42 USC 654.

(f) Section 454 of such Act is further amended by adding at the end thereof (after and below paragraph (21) (as added by subsection (d) of this section)) the following new sentence:

*Supra*.

“The State may allow the jurisdiction which makes the collection involved to retain any application fee under paragraph (6)(B) or any late payment fee under paragraph (21).”.

*Ante*, p. 1310.

(g)(1) Except as provided in paragraphs (2) and (3), the amendments made by this section shall become effective on October 1, 1985.

Effective dates.  
42 USC 654 note.

(2) Section 454(21) of the Social Security Act (as added by subsection (d) of this section), and section 466(e) of such Act (as added by subsection (b) of this section), shall be effective with respect to support owed for any month beginning after the date of the enactment of this Act.

*Supra*.

*Ante*, p. 1306.

(3) In the case of a State with respect to which the Secretary of Health and Human Services has determined that State legislation is required in order to conform the State plan approved under part D of title IV of the Social Security Act to the requirements imposed by any amendment made by this section, the State plan shall not be regarded as failing to comply with the requirements of such part solely by reason of its failure to meet the requirements imposed by such amendment prior to the beginning of the fourth month beginning after the end of the first session of the State legislature which ends on or after October 1, 1985. For purposes of the preceding sentence, the term “session” means a regular, special, budget, or other session of a State legislature.

42 USC 651.

#### FEDERAL MATCHING OF ADMINISTRATIVE COSTS

SEC. 4. (a) Section 455(a) of the Social Security Act is amended—  
(1) by inserting “(1)” after “(a)”;

42 USC 655.

(2) by striking out “, beginning with the quarter commencing July 1, 1975,”;

(3) by striking out paragraph (2) and redesignating paragraphs (1) and (3) as subparagraphs (A) and (B), respectively;

(4) by amending paragraph (1)(A) as so redesignated to read as follows:

“(A) equal to the percent specified in paragraph (2) of the total amounts expended by such State during such quarter for the operation of the plan approved under section 454, and”;

(5) in paragraph (1)(B) as so redesignated, by striking out “specified in clause (1) or (2)” and inserting in lieu thereof “specified in subparagraph (A)”;

(6) by adding at the end thereof the following new paragraph:

“(2) The percent applicable to quarters in a fiscal year for purposes of paragraph (1)(A) is—

“(A) 70 percent for fiscal years 1984, 1985, 1986, and 1987,

“(B) 68 percent for fiscal years 1988 and 1989, and

“(C) 66 percent for fiscal year 1990 and each fiscal year thereafter.”

(b) Subsections (d)(1)(B), (d)(2)(A), (d)(2)(B), and (e) of section 452 of such Act are each amended by striking out “455(a)(3)” and inserting in lieu thereof “455(a)(1)(B)”.

(c) The amendments made by this section shall apply to fiscal years after fiscal year 1983.

42 USC 652.

Effective date.  
42 USC 652 note.

#### FEDERAL INCENTIVE PAYMENTS

42 USC 658.

SEC. 5. (a) Section 458 of the Social Security Act is amended to read as follows:

#### “INCENTIVE PAYMENTS TO STATES

“SEC. 458. (a) In order to encourage and reward State child support enforcement programs which perform in a cost-effective and efficient manner to secure support for all children who have sought assistance in securing support, whether such children reside within the State or elsewhere and whether or not they are eligible for aid to families with dependent children under a State plan approved under part A of this title, and regardless of the economic circumstances of their parents, the Secretary shall, from support collected which would otherwise represent the Federal share of assistance to families of absent parents, pay to each State for each fiscal year, on a quarterly basis (as described in subsection (e)) beginning with the quarter commencing October 1, 1985, an incentive payment in an amount determined under subsection (b).

“(b)(1) Except as provided in paragraphs (2), (3), and (4), the incentive payment shall be equal to—

“(A) 6 percent of the total amount of support collected under the plan during the fiscal year in cases in which the support obligation involved is assigned to the State pursuant to section 402(a)(26) or section 471(a)(17) (with such total amount for any fiscal year being hereafter referred to in this section as the State’s ‘AFDC collections’ for that year), plus

“(B) 6 percent of the total amount of support collected during the fiscal year in all other cases under this part (with such total amount for any fiscal year being hereafter referred to in this section as the State’s ‘non-AFDC collections’ for that year).

42 USC 602.  
Post, p. 1318.



“(2) If subsection (c) applies with respect to a State’s AFDC collections or non-AFDC collections for any fiscal year, the percent specified in paragraph (1) (A) or (B) (with respect to such collections) shall be increased to the higher percent determined under such subsection (with respect to such collections) in determining the State’s incentive payment under this subsection for that year.

“(3) The dollar amount of the portion of the State’s incentive payment for any fiscal year which is determined on the basis of its non-AFDC collections under paragraph (1)(B) (after adjustment under subsection (c) if applicable) shall in no case exceed—

“(A) the dollar amount of the portion of such payment which is determined on the basis of its AFDC collections under paragraph (1)(A) (after adjustment under subsection (c) if applicable) in the case of fiscal year 1986 or 1987;

“(B) 105 percent of such dollar amount in the case of fiscal year 1988;

“(C) 110 percent of such dollar amount in the case of fiscal year 1989; or

“(D) 115 percent of such dollar amount in the case of fiscal year 1990 or any fiscal year thereafter.

“(4) The Secretary shall make such additional payments to the State under this part, for fiscal year 1986 or 1987, as may be necessary to assure that the total amount of payments under this section and section 455(a)(1)(A) for such fiscal year is no less than 80 percent of the amount that would have been payable to that State and its political subdivisions for such fiscal year under this section and section 455(a)(1)(A) if those sections (including the amendment made by section 5(c)(2)(A) of the Child Support Enforcement Amendments of 1984) had remained in effect as they were in effect for fiscal year 1985.

*Ante*, p. 1311.

*Ante*, p. 1312.

“(c) If the total amount of a State’s AFDC collections or non-AFDC collections for any fiscal year bears a ratio to the total amount expended by the State in that year for the operation of its plan approved under section 454 for which payment may be made under section 455 (with the total amount so expended in any fiscal year being hereafter referred to in this section as the State’s ‘combined AFDC/non-AFDC administrative costs’ for that year) which is equal to or greater than 1.4, the relevant percent specified in subparagraph (A) or (B) of subsection (b)(1) (with respect to such collections) shall be increased to—

42 USC 654.

42 USC 655.

“(1) 6.5 percent, plus

“(2) one-half of 1 percent for each full two-tenths by which such ratio exceeds 1.4;

except that the percent so specified shall in no event be increased (for either AFDC collections or non-AFDC collections) to more than 10 percent. For purposes of the preceding sentence, laboratory costs incurred in determining paternity in any fiscal year may at the option of the State be excluded from the State’s combined AFDC/non-AFDC administrative costs for that year.

“(d) In computing incentive payments under this section, support which is collected by one State on behalf of individuals residing in another State shall be treated as having been collected in full by each such State.

“(e) The amounts of the incentive payments to be made to the various States under this section for any fiscal year shall be estimated by the Secretary at or before the beginning of such year on the basis of the best information available. The Secretary shall

make such payments for such year, on a quarterly basis (with each quarterly payment being made no later than the beginning of the quarter involved), in the amounts so estimated, reduced or increased to the extent of any overpayments or underpayments which the Secretary determines were made under this section to the States involved for prior periods and with respect to which adjustment has not already been made under this subsection. Upon the making of any estimate by the Secretary under the preceding sentence, any appropriations available for payments under this section shall be deemed obligated.”

*Ante*, p. 1306. (b) Section 454 of such Act (as amended by subsections (a), (d), and (f) of section 3 of this Act) is amended—

(1) by striking out “and” at the end of paragraph (20);

(2) by striking out the period at the end of paragraph (21) and inserting in lieu thereof “; and”; and

(3) by inserting immediately after paragraph (21) the following new paragraph:

“(22) in order for the State to be eligible to receive any incentive payments under section 458, provide that, if one or more political subdivisions of the State participate in the costs of carrying out activities under the State plan during any period, each such subdivision shall be entitled to receive an appropriate share (as determined by the State) of any such incentive payments made to the State for such period, taking into account the efficiency and effectiveness of the activities carried out under the State plan by such political subdivision.”.

Effective dates. (c)(1) The amendments made by the preceding provisions of this  
42 USC 658 note. section shall become effective on October 1, 1985.

*Ante*, p. 1312. (2)(A) Effective until September 30, 1985, section 458(a) of the Social Security Act is amended by striking out “distributed as provided in section 457 to reduce or repay assistance payments” and inserting in lieu thereof “distributed as provided in paragraphs (1), (2), and (4)(A) of section 457(b)”.

*Ante*, p. 1145. (B) The reference to provisions of section 457(b) of the Social  
42 USC 658 note. Security Act in the amendment made by subparagraph (A) of this paragraph is a reference to such provisions as in effect after the effective date of section 2640(b) of the Deficit Reduction Act of 1984.

*Ante*, p. 1145.

#### 90-PERCENT MATCHING FOR AUTOMATED MANAGEMENT SYSTEMS USED IN INCOME WITHHOLDING AND OTHER REQUIRED PROCEDURES

42 USC 654. SEC. 6. (a) Section 454(16) of the Social Security Act is amended by striking out “and (D)” and inserting in lieu thereof the following: “(D) to facilitate the development and improvement of the income withholding and other procedures required under section 466(a) through the monitoring of support payments, the maintenance of accurate records regarding the payment of support, and the prompt provision of notice to appropriate officials with respect to any arrearages in support payments which may occur, and (E)”.

*Ante*, p. 1311. (b) Section 455(a)(1)(B) of such Act (as redesignated by section 4(a) of this Act) is amended—

(1) by inserting after “automatic data processing and information retrieval system” the following: “(including in such sums the full cost of the hardware components of such system)”; and

(2) by inserting before the semicolon at the end thereof the following: “, or meets such requirements without regard to clause (D) thereof”.

(c) The amendments made by this section shall apply with respect to quarters beginning on or after October 1, 1984. Effective date.  
42 USC 654 note.

**CONTINUATION OF SUPPORT ENFORCEMENT FOR AFDC RECIPIENTS  
WHOSE BENEFITS ARE BEING TERMINATED**

SEC. 7. (a) Section 457(c) of the Social Security Act is amended— 42 USC 657.

(1) by striking out “may” in the matter preceding paragraph (1) and inserting in lieu thereof “shall”; and

(2) by striking out “the net amount of” in paragraph (2), and by striking out “to the family” and all that follows in such paragraph and inserting in lieu thereof “to the family (without requiring any formal reapplication and without the imposition of any application fee) on the same basis as in the case of other individuals who are not receiving assistance under part A of this title.” 42 USC 601.

(b) The amendments made by subsection (a) shall become effective October 1, 1984. Effective date.  
42 USC 657 note.

**SPECIAL PROJECT GRANTS TO PROMOTE IMPROVEMENTS IN INTERSTATE  
ENFORCEMENT**

SEC. 8. Section 455 of the Social Security Act is amended by adding at the end thereof the following new subsection: 42 USC 655.

“(e)(1) In order to encourage and promote the development and use of more effective methods of enforcing support obligations under this part in cases where either the children on whose behalf the support is sought or their absent parents do not reside in the State where such cases are filed, the Secretary is authorized to make grants, in such amounts and on such terms and conditions as the Secretary determines to be appropriate, to States which propose to undertake new or innovative methods of support collection in such cases and which will use the proceeds of such grants to carry out special projects designed to demonstrate and test such methods.

“(2) A grant under this subsection shall be made only upon a finding by the Secretary that the project involved is likely to be of significant assistance in carrying out the purpose of this subsection; and with respect to such project the Secretary may waive any of the requirements of this part which would otherwise be applicable, to such extent and for such period as the Secretary determines is necessary or desirable in order to enable the State to carry out the project.

“(3) At the time of its application for a grant under this subsection the State shall submit to the Secretary a statement describing in reasonable detail the project for which the proceeds of the grant are to be used, and the State shall from time to time thereafter submit to the Secretary such reports with respect to the project as the Secretary may specify. Reports.

“(4) Amounts expended by a State in carrying out a special project assisted under this section shall be considered, for purposes of section 458(b) (as amended by section 5(a) of the Child Support Enforcement Amendments of 1984), to have been expended for the operation of the State’s plan approved under section 454.

“(5) There is authorized to be appropriated the sum of \$7,000,000 for fiscal year 1985, \$12,000,000 for fiscal year 1986, and \$15,000,000 for each fiscal year thereafter, to be used by the Secretary in making grants under this subsection.” Ante, p. 1312.  
42 USC 654.  
Appropriation  
authorization.



PERIODIC REVIEW OF EFFECTIVENESS OF STATE PROGRAMS;  
MODIFICATION OF PENALTY

- 42 USC 552. SEC. 9. (a)(1) Section 452(a)(4) of the Social Security Act is amended by striking out "not less often than annually" and inserting in lieu thereof "not less often than once every three years (or not less often than annually in the case of any State to which a reduction is being applied under section 403(h)(1), or which is operating under a corrective action plan in accordance with section 403(h)(2))".
- Infra.*
- 42 USC 602. (2) Section 402(a)(27) of such Act is amended by striking out "operate a child support program in conformity with such plan" and inserting in lieu thereof "operates a child support program in substantial compliance with such plan".
- 42 USC 603. (b) Section 403(h) of such Act is amended to read as follows:
- 42 USC 651. "(h)(1) Notwithstanding any other provision of this Act, if a State's  
*Supra.* program operated under part D is found as a result of a review conducted under section 452(a)(4) not to have complied substantially with the requirements of such part for any quarter beginning after September 30, 1983, and the Secretary determines that the State's program is not complying substantially with such requirements at the time such finding is made, the amounts otherwise payable to the State under this part for such quarter and each subsequent quarter, prior to the first quarter throughout which the State program is found to be in substantial compliance with such requirements, shall be reduced (subject to paragraph (2)) by—
- "(A) not less than one nor more than two percent, or
  - "(B) not less than two nor more than three percent, if the finding is the second consecutive such finding made as a result of such a review, or
  - "(C) not less than three nor more than five percent, if the finding is the third or a subsequent consecutive such finding made as a result of such a review.
- "(2)(A) The reductions required under paragraph (1) shall be suspended for any quarter if—
- "(i) the State submits a corrective action plan, within a period prescribed by the Secretary following notice of the finding under paragraph (1), which contains steps necessary to achieve substantial compliance within a time period which the Secretary finds to be appropriate;
  - "(ii) the Secretary approves such corrective action plan (and any amendments thereto) as being sufficient to achieve substantial compliance; and
  - "(iii) the Secretary finds that the corrective action plan (and any amendment thereto approved by the Secretary under clause (ii)), is being fully implemented by the State and that the State is progressing in accordance with the timetable contained in the plan to achieve substantial compliance with such requirements.
- "(B) A suspension of the penalty under subparagraph (A) shall continue until such time as the Secretary determines that—
- "(i) the State has achieved substantial compliance,
  - "(ii) the State is no longer implementing its corrective action plan, or
  - "(iii) the State is implementing or has implemented its corrective action plan but has failed to achieve substantial compliance within the appropriate time period (as specified in subparagraph (A)(i)).

“(C)(i) In the case of a State whose penalty suspension ends pursuant to subparagraph (B)(i), the penalty shall not be applied.

“(ii) In the case of a State whose penalty suspension ends pursuant to subparagraph (B)(ii), the penalty shall be applied as if the suspension had not occurred.

“(iii) In the case of a State whose penalty suspension ends pursuant to subparagraph (B)(iii), the penalty shall be applied to all quarters ending after the expiration of the time period specified in such subparagraph (and prior to the first quarter throughout which the State program is found to be in substantial compliance).

“(3) For purposes of this subsection, section 402(a)(27), and section 452(a)(4), a State which is not in full compliance with the requirements of this part shall be determined to be in substantial compliance with such requirements only if the Secretary determines that any noncompliance with such requirements is of a technical nature which does not adversely affect the performance of the child support enforcement program.”.

*Ante*, p. 1316.

*Ante*, p. 1316.

(c) The amendments made by this section shall be effective on and after October 1, 1983.

Effective date.

42 USC 602 note.

#### EXTENSION OF SECTION 1115 DEMONSTRATION AUTHORITY TO CHILD SUPPORT ENFORCEMENT PROGRAM

SEC. 10. (a) Section 1115(a) of the Social Security Act is amended—

42 USC 1315.

(1) by striking out “part A” in the matter preceding paragraph (1) and inserting in lieu thereof “part A or D”;

(2) by striking out “402,” in paragraph (1) and inserting in lieu thereof “402, 454,”; and

(3) by striking out “403,” in paragraph (2) and inserting in lieu thereof “403, 455,”.

(b) Section 1115 of such Act is further amended by adding at the end thereof the following new subsection:

42 USC 1315.

“(c) In the case of any experimental, pilot, or demonstration project undertaken under subsection (a) to assist in promoting the objectives of part D of title IV, the project—

42 USC 651.

“(1) must be designed to improve the financial well-being of children or otherwise improve the operation of the child support program;

“(2) may not permit modifications in the child support program which would have the effect of disadvantaging children in need of support; and

“(3) must not result in increased cost to the Federal Government under the program of aid to families with dependent children.”.

#### CHILD SUPPORT ENFORCEMENT FOR CERTAIN CHILDREN IN FOSTER CARE

SEC. 11. (a)(1) Section 457 of the Social Security Act is amended by adding at the end thereof the following new subsection:

42 USC 657.

“(d) Notwithstanding the preceding provisions of this section, amounts collected by a State as child support for months in any period on behalf of a child for whom a public agency is making foster care maintenance payments under part E—

42 USC 670.

“(1) shall be retained by the State to the extent necessary to reimburse it for the foster care maintenance payments made with respect to the child during such period (with appropriate



reimbursement of the Federal Government to the extent of its participation in the financing);

“(2) shall be paid to the public agency responsible for supervising the placement of the child to the extent that the amounts collected exceed the foster care maintenance payments made with respect to the child during such period but not the amounts required by a court or administrative order to be paid as support on behalf of the child during such period; and the responsible agency may use the payments in the manner it determines will serve the best interests of the child, including setting such payments aside for the child’s future needs or making all or a part thereof available to the person responsible for meeting the child’s day-to-day needs; and

“(3) shall be retained by the State, if any portion of the amounts collected remains after making the payments required under paragraphs (1) and (2), to the extent that such portion is necessary to reimburse the State (with appropriate reimbursement to the Federal Government to the extent of its participation in the financing) for any past foster care maintenance payments (or payments of aid to families with dependent children) which were made with respect to the child (and with respect to which past collections have not previously been retained);

and any balance shall be paid to the State agency responsible for supervising the placement of the child, for use by such agency in accordance with paragraph (2).”.

*Ante*, p. 1145.  
42 USC 657.

(2) Section 457(b) of such Act is amended by inserting “(subject to subsection (d))” after “shall” in the matter preceding paragraph (1).

(b) Part D of title IV of such Act is further amended—

*Post*, p. 1319.

(1) in section 454(4)(B), by inserting “including an assignment with respect to a child on whose behalf a State agency is making foster care maintenance payments under part E,” immediately after “such assignment is effective,” and by inserting “or E” immediately after “part A”; and

42 USC 670.

(2) in section 456(a), by inserting “or secured on behalf of a child receiving foster care maintenance payments” immediately after “section 402(a)(26)”.

*Ante*, p. 1167.  
42 USC 656.

(c) Section 471(a) of such Act is amended—

42 USC 671.

(1) by striking out “and” at the end of paragraph (15);

(2) by striking out the period at the end of paragraph (16) and inserting in lieu thereof “; and”; and

(3) by adding at the end thereof the following new paragraph:

“(17) provides that, where appropriate, all steps will be taken, including cooperative efforts with the State agencies administering the plans approved under parts A and D, to secure an assignment to the State of any rights to support on behalf of each child receiving foster care maintenance payments under this part.”.

42 USC 601, 651.

(d) Section 464(a) of such Act is amended—

*Post*, p. 1322.

(1) by inserting “or section 471(a)(17)” after “402(a)(26)”; and

(2) by striking out “457(b)(3)” and inserting in lieu thereof “457 (b)(4) or (d)(3)”.

(e) The amendments made by this section shall become effective October 1, 1984, and shall apply to collections made on or after that date.

Effective date.  
42 USC 654 note.

## ENFORCEMENT WITH RESPECT TO BOTH CHILD AND SPOUSAL SUPPORT

SEC. 12. (a) Section 454(4)(B) of the Social Security Act is amended—

(1) by striking out “and, at the option of the State,” and inserting in lieu thereof “, and”; and

(2) by inserting “, and only if the support obligation established with respect to the child is being enforced under the plan” immediately after “but only if a support obligation has been established with respect to such spouse”.

(b) Clause (A) of section 454(6) of such Act is amended—

(1) by striking out “, at the option of the State,”; and

(2) by inserting “, and only if the support obligation established with respect to the child is being enforced under the plan” immediately after “but only if a support obligation has been established with respect to such spouse”.

(c) The amendments made by this section shall become effective October 1, 1985.

Effective date.  
42 USC 654 note.

## MODIFICATIONS IN CONTENT OF ANNUAL REPORT OF THE SECRETARY

SEC. 13. (a) Section 452(a)(10)(C) of the Social Security Act is amended to read as follows:

“(C) the following data, with the data required under each clause being separately stated for cases where the child is receiving aid to families with dependent children (or foster care maintenance payments under part E), cases where the child was formerly receiving such aid or payments and the State is continuing to collect support assigned to it under section 402(a)(26) or 471(a)(17), and all other cases under this part:

42 USC 602.  
*Ante*, p. 1318.

“(i) the total number of cases in which a support obligation has been established in the fiscal year for which the report is submitted, and the total amount of such obligations;

“(ii) the total number of cases in which a support obligation has been established, and the total amount of such obligations;

“(iii) the number of cases described in clause (i) in which support was collected during such fiscal year, and the total amount of such collections;

“(iv) the number of cases described in clause (ii) in which support was collected during such fiscal year, and the total amount of such collections; and

“(v) the number of child support cases filed in each State in such fiscal year, and the amount of the collections made in each State in such fiscal year, on behalf of children residing in another State or against parents residing in another State;”.

(b) Section 452(a)(10) of such Act is further amended—

42 USC 652.

(1) by striking out “and” at the end of subparagraph (G);

(2) by striking out the period at the end of subparagraph (H) and inserting in lieu thereof “; and”; and

(3) by inserting immediately after subparagraph (H) the following new subparagraph:

“(I) the amount of administrative costs which are expended in each functional category of expenditures, including establishment of paternity.”.

Effective date.  
42 USC 652 note.

(c) The amendments made by this section shall be effective for reports for fiscal year 1986 and each fiscal year thereafter.

#### REQUIREMENT THAT AVAILABILITY OF CHILD SUPPORT ENFORCEMENT SERVICES BE PUBLICIZED

*Ante*, p. 1314.

SEC. 14. (a) Section 454 of the Social Security Act (as amended by the preceding provisions of this Act) is further amended—

(1) by striking out “and” at the end of paragraph (21);

(2) by striking out the period at the end of paragraph (22) and inserting in lieu thereof “; and”; and

(3) by inserting immediately after paragraph (22) the following new paragraph:

“(23) provide that the State will regularly and frequently publicize, through public service announcements, the availability of child support enforcement services under the plan and otherwise, including information as to any application fees for such services and a telephone number or postal address at which further information may be obtained.”.

Effective date.  
42 USC 654 note.

(b) The amendments made by subsection (a) shall become effective October 1, 1985.

#### STATE COMMISSIONS ON CHILD SUPPORT

42 USC 654 note.  
42 USC 601, 651.

SEC. 15. (a) As a condition of the State's eligibility for Federal payments under part A or D of title IV of the Social Security Act for quarters beginning more than 30 days after the date of the enactment of this Act and ending prior to October 1, 1985, the Governor of each State, on or before December 1, 1984, shall (subject to subsection (f)) appoint a State Commission on Child Support.

(b) Each State Commission appointed under subsection (a) shall be composed of members appropriately representing all aspects of the child support system, including custodial and non-custodial parents, the agency or organizational unit administering the State's plan under part D of such title IV, the State judiciary, the executive and legislative branches of the State government, child welfare and social services agencies, and others.

(c) It shall be the function of each State Commission to examine, investigate, and study the operation of the State's child support system for the primary purpose of determining the extent to which such system has been successful in securing support and parental involvement both for children who are eligible for aid under a State plan approved under part A of title IV of such Act and for children who are not eligible for such aid, giving particular attention to such specific problems (among others) as visitation, the establishment of appropriate objective standards for support, the enforcement of interstate obligations, the availability, cost, and effectiveness of services both to children who are eligible for such aid and to children who are not, and the need for additional State or Federal legislation to obtain support for all children.

(d) Each State Commission shall submit to the Governor of the State and make available to the public, no later than October 1, 1985, a full and complete report of its findings and recommendations resulting from the examination, investigation, and study under this

Report.  
Public  
availability.



section. The Governor shall transmit such report to the Secretary of Health and Human Services along with the Governor's comments thereon.

(e) None of the costs incurred in the establishment and operation of a State Commission under this section, or incurred by such a Commission in carrying out its functions under subsections (c) and (d), shall be considered as expenditures qualifying for Federal payments under part A or D of title IV of the Social Security Act or be otherwise payable or reimbursable by the United States or any agency thereof.

42 USC 601, 651.

(f) If the Secretary determines, at the request of any State on the basis of information submitted by the State and such other information as may be available to the Secretary, that such State—

(1) has placed in effect and is implementing objective standards for the determination and enforcement of child support obligations,

(2) has established within the five years prior to the enactment of this Act a commission or council with substantially the same functions as the State Commissions provided for under this section, or

*Ante*, p. 1305.

(3) is making satisfactory progress toward fully effective child support enforcement and will continue to do so, then such State shall not be required to establish a State Commission under this section and the preceding provisions of this section shall not apply.

#### INCLUSION OF MEDICAL SUPPORT IN CHILD SUPPORT ORDERS

SEC. 16. Section 452 of the Social Security Act is amended by adding at the end thereof the following new subsection:

42 USC 652.

"(f) The Secretary shall issue regulations to require that State agencies administering the child support enforcement program under this part petition for the inclusion of medical support as part of any child support order whenever health care coverage is available to the absent parent at a reasonable cost. Such regulation shall also provide for improved information exchange between such State agencies and the State agencies administering the State medicaid programs under title XIX with respect to the availability of health insurance coverage."

Regulations.

42 USC 1396.

#### INCREASED AVAILABILITY OF FEDERAL PARENT LOCATOR SERVICE TO STATE AGENCIES

SEC. 17. Section 453(f) of the Social Security Act is amended by striking out " , after determining that the absent parent cannot be located through the procedures under the control of such State agencies,".

42 USC 653.

#### STATE GUIDELINES FOR CHILD SUPPORT AWARDS

SEC. 18. (a) Part D of title IV of the Social Security Act (as amended by section 3(b) of this Act) is further amended by adding at the end thereof the following new section:

*Ante*, p. 1306.

#### "STATE GUIDELINES FOR CHILD SUPPORT AWARDS

"SEC. 467. (a) Each State, as a condition for having its State plan approved under this part, must establish guidelines for child support

42 USC 667.

award amounts within the State. The guidelines may be established by law or by judicial or administrative action.

“(b) The guidelines established pursuant to subsection (a) shall be made available to all judges and other officials who have the power to determine child support awards within such State, but need not be binding upon such judges or other officials.

“(c) The Secretary shall furnish technical assistance to the States for establishing the guidelines, and each State shall furnish the Secretary with copies of its guidelines.”.

Effective date.  
42 USC 667 note.

(b) The amendment made by subsection (a) shall become effective on October 1, 1987.

#### AVAILABILITY OF SOCIAL SECURITY NUMBERS FOR CHILD SUPPORT ENFORCEMENT PURPOSES

42 USC 653.

SEC. 19. (a) Section 453(b) of the Social Security Act is amended by inserting “the social security account number (or numbers, if the individual involved has more than one such number) and” before “the most recent address”.

26 USC 6103.

(b)(1) Section 6103(l)(6)(A)(i) of the Internal Revenue Code of 1954 is amended by inserting “social security account number (or numbers, if the individual involved has more than one such number),” before “address”.

*Ante*, p. 820.

(2) Section 6103(l)(8)(A) of such Code is amended by inserting “social security account numbers,” before “net earnings”.

#### EXTENSION OF ELIGIBILITY UNDER TITLE XIX WHEN SUPPORT COLLECTION RESULTS IN TERMINATION OF AFDC ELIGIBILITY

42 USC 606.

SEC. 20. (a) Section 406 of the Social Security Act is amended by adding at the end thereof the following new subsection:

“(h) Each dependent child, and each relative with whom such a child is living (including the spouse of such relative as described in subsection (b)), who becomes ineligible for aid to families with dependent children as a result (wholly or partly) of the collection or increased collection of child or spousal support under part D, and who has received such aid in at least three of the six months immediately preceding the month in which such ineligibility begins, shall be deemed to be a recipient of aid to families with dependent children for purposes of title XIX for an additional four calendar months beginning with the month in which such ineligibility begins.”.

Effective date.  
42 USC 606 note.

(b) The amendment made by subsection (a) shall apply only with respect to individuals becoming ineligible for aid to families with dependent children (as described in section 406(h) of the Social Security Act as added by such subsection) on or after the date of the enactment of this Act and before October 1, 1988.

*Supra*.

*Ante*, p. 1104.  
42 USC 1396a.

(c) Section 1902(a)(10)(A)(i)(I) of such Act is amended by inserting “or 406(h)” after “402(a)(37)”.

#### COLLECTION OF PAST-DUE SUPPORT FROM FEDERAL TAX REFUNDS

42 USC 664.

SEC. 21. (a) Section 464(a) of the Social Security Act (as amended by section 12(d) of this Act) is further amended by inserting “(1)” after “SEC. 464. (a)” and by adding at the end thereof the following new paragraphs:



“(2)(A) Upon receiving notice from a State agency administering a plan approved under this part that a named individual owes past-due support (as that term is defined for purposes of this paragraph under subsection (c)) which such State has agreed to collect under section 454(6), and that the State agency has sent notice to such individual in accordance with paragraph (3)(A), the Secretary of the Treasury shall determine whether any amounts, as refunds of Federal taxes paid, are payable to such individual (regardless of whether such individual filed a tax return as a married or unmarried individual). If the Secretary of the Treasury finds that any such amount is payable, he shall withhold from such refunds an amount equal to such past-due support, and shall concurrently send notice to such individual that the withholding has been made, including in or with such notice a notification to any other person who may have filed a joint return with such individual of the steps which such other person may take in order to secure his or her proper share of the refund. The Secretary of the Treasury shall pay the amount withheld to the State agency, and the State shall pay to the Secretary of the Treasury any fee imposed by the Secretary of the Treasury to cover the costs of the withholding and any required notification. The State agency shall, subject to paragraph (3)(B), distribute such amount to or on behalf of the child to whom the support was owed.

*Ante*, p. 1310,  
1319.  
*Post*, p. 1324.

“(B) This paragraph shall apply only with respect to refunds payable under section 6402 of the Internal Revenue Code of 1954 after December 31, 1985, and before January 1, 1991.

Effective date.  
*Ante*, p. 1154.

“(3)(A) Prior to notifying the Secretary of the Treasury under paragraph (1) or (2) that an individual owes past-due support, the State shall send notice to such individual that a withholding will be made from any refund otherwise payable to such individual. The notice shall also (i) instruct the individual owing the past-due support of the steps which may be taken to contest the State's determination that past-due support is owed or the amount of the past-due support, and (ii) provide information, as may be prescribed by the Secretary of Health and Human Services by regulation in consultation with the Secretary of the Treasury, with respect to procedures to be followed, in the case of a joint return, to protect the share of the refund which may be payable to another person.

“(B) If the Secretary of the Treasury determines that an amount should be withheld under paragraph (1) or (2), and that the refund from which it should be withheld is based upon a joint return, the Secretary of the Treasury shall notify the State that the withholding is being made from a refund based upon a joint return, and shall furnish to the State the names and addresses of each taxpayer filing such joint return. In the case of a withholding under paragraph (2), the State may delay distribution of the amount withheld until the State has been notified by the Secretary of the Treasury that the other person filing the joint return has received his or her proper share of the refund, but such delay may not exceed six months.

“(C) If the other person filing the joint return with the named individual owing the past-due support takes appropriate action to secure his or her proper share of a refund from which a withholding was made under paragraph (1) or (2), the Secretary of the Treasury shall pay such share to such other person. The Secretary of the Treasury shall deduct the amount of such payment from amounts subsequently payable to the State agency to which the amount originally withheld from such refund was paid.

“(D) In any case in which an amount was withheld under paragraph (1) or (2) and paid to a State, and the State subsequently determines that the amount certified as past-due support was in excess of the amount actually owed at the time the amount withheld is to be distributed to or on behalf of the child, the State shall pay the excess amount withheld to the named individual thought to have owed the past-due support (or, in the case of amounts withheld on the basis of a joint return, jointly to the parties filing such return).”.

*Ante*, p. 1322.

(b)(1) Section 464(a)(1) of such Act (as redesignated by subsection (a) of this section) is amended by striking out “and pay” in the second sentence and inserting in lieu thereof the following: “shall concurrently send notice to such individual that the withholding has been made (including in or with such notice a notification to any other person who may have filed a joint return with such individual of the steps which such other person may take in order to secure his or her proper share of the refund), and shall pay”.

42 USC 664.

(2) Section 464(b) of such Act is amended—

(A) by inserting “(1)” after “(b)”;

(B) by striking out “The regulations shall specify” in the second sentence and inserting in lieu thereof “The regulations shall be consistent with the provisions of subsection (a)(3), shall specify”;

(C) by striking out “and provide” and inserting in lieu thereof “and shall provide”;

(D) by adding at the end of paragraph (1) as so redesignated the following: “Any fee paid to the Secretary of the Treasury pursuant to this subsection may be used to reimburse appropriations which bore all or part of the cost of applying such procedure.”; and

*Ante*, p. 1322.

(E) by adding at the end thereof the following new paragraph:

“(2) In the case of withholdings made under subsection (a)(2), the regulations promulgated pursuant to this subsection shall include the following requirements:

“(A) The withholding shall apply only in the case where the State determines that the amount of the past-due support which will be owed at the time the withholding is to be made, based upon the pattern of payment of support and other enforcement actions being pursued to collect the past-due support, is equal to or greater than \$500. The State may limit the \$500 threshold amount to amounts of past-due support accrued since the time that the State first began to enforce the child support order involved under the State plan, and may limit the application of the withholding to past-due support accrued since such time.

“(B) The fee which the Secretary of the Treasury may impose to cover the costs of the withholding and notification may not exceed \$25 per case submitted.”.

42 USC 664.

(c) Section 464(c) of such Act is amended—

(1) by striking out “(c) As used in this part” and inserting in lieu thereof “(c)(1) Except as provided in paragraph (2), as used in this part”; and

*Ante*, p. 1322.

(2) by adding at the end thereof the following new paragraph:

“(2) For purposes of subsection (a)(2), the term ‘past-due support’ means only past-due support owed to or on behalf of a minor child.”.

*Ante*, p. 1307.

(d) Section 454(6) of the Social Security Act (as amended by section 3(c) of this Act) is further amended—

(1) by redesignating clause (C) as clause (D);

(2) by striking out “fee so imposed” in clause (D) as so redesignated and inserting in lieu thereof “fees so imposed”; and

(3) by striking out “, and” at the end of clause (B) and inserting in lieu thereof “, (C) a fee of not more than \$25 may be imposed in any case where the State requests the Secretary of the Treasury to withhold past-due support owed to or on behalf of such individual from a tax refund pursuant to section 464(a)(2), and”.

*Ante*, p. 1322.

(e)(1) Section 6402(c) of the Internal Revenue Code of 1954 is amended—

26 USC 6402.

(A) by striking out “to which such support has been assigned” and inserting in lieu thereof “collecting such support”; and

(B) by inserting before the last sentence thereof the following: “A reduction under this subsection shall be applied first to satisfy any past-due support which has been assigned to the State under section 402(a)(26) or 471(a)(17) of the Social Security Act, and shall be applied to satisfy any other past-due support after any other reductions allowed by law (but before a credit against future liability for an internal revenue tax) have been made.”.

42 USC 602.

*Ante*, p. 1318.

(2) Section 6402 of such Code (as amended by section 2653 of the Deficit Reduction Act of 1984) is further amended by redesignating subsection (g) as subsection (h), and by inserting after subsection (f) the following new subsection:

*Ante*, p. 1154.

“(g) TREATMENT OF PAYMENTS TO STATES.—The Secretary may provide that, for purposes of determining interest, the payment of any amount withheld under subsection (c) to a State shall be treated as a payment to the person or persons making the overpayment.”.

(f)(1) Section 6103(l) of such Code (as so amended) is further amended by adding at the end thereof the following new paragraph:

*Ante*, p. 1155

“(11) DISCLOSURE OF CERTAIN INFORMATION TO AGENCIES REQUESTING A REDUCTION UNDER SECTION 6402(c).—

*Supra*.

“(A) RETURN INFORMATION FROM INTERNAL REVENUE SERVICE.—The Secretary shall, upon receiving a written request, disclose to officers and employees of a State agency seeking a reduction under section 6402(c)—

“(i) the fact that a reduction has been made or has not been made under such subsection with respect to any taxpayer;

“(ii) the amount of such reduction;

“(iii) whether such taxpayer filed a joint return;

“(iv) taxpayer identity information with respect to the taxpayer against whom a reduction was made or not made and of any other person filing a joint return with such taxpayer; and

“(v) the fact that a payment was made (and the amount of the payment) on the basis of a joint return in accordance with section 464(a)(3) of the Social Security Act.

*Ante*, p. 1322.

“(B) RESTRICTION ON USE OF DISCLOSED INFORMATION.—Any officers and employees of an agency receiving return information under subparagraph (A) shall use such information only for the purposes of, and to the extent necessary in, establishing appropriate agency records or in the defense of any litigation or administrative procedure ensuing from a reduction made under section 6402(c).”.

*Supra*.



- Ante*, p. 1155. (2) Section 6103(p)(3)(A) of such Code (as so amended) is further amended by striking out “or (10)” and inserting in lieu thereof “(10), or (11)”.
- Ante*, p. 1155. (3) Section 6103(p)(4) of such Code (as so amended) is further amended by striking out “or (10)” and inserting in lieu thereof “(10), or (11)”.
- Ante*, p. 1156. (4) Section 6103(p)(4)(F)(ii) of such Code (as so amended) is further amended by striking out “or (10)” and inserting in lieu thereof “(10), or (11)”.
- Ante*, p. 1156. (5) Section 7213(a)(2) of such Code (as so amended) is further amended by striking out “or (10)” and inserting in lieu thereof “(10), or (11)”.
- Effective date.  
26 USC 6103  
note.  
*Ante*, p. 1325. (g) The amendments made by this section shall apply with respect to refunds payable under section 6402 of the Internal Revenue Code of 1954 after December 31, 1985.

## WISCONSIN CHILD SUPPORT INITIATIVE

- Waiver.  
42 USC 602 note.  
42 USC 601, 651. SEC. 22. (a)(1) If the State of Wisconsin requests the Secretary of Health and Human Services to waive the requirements of parts A and D of title IV of the Social Security Act, or to waive the requirements of part D and only those requirements of part A of such Act as relate to the provision of aid to dependent children as defined (without regard to section 407) in section 406(a) of the Social Security Act (hereafter referred to in this section as “dependent children in single-parent families”), in order to permit the State to make an adequate test in any county or counties, or throughout the State, of its Child Support Initiative, the Secretary shall waive such requirements if—
- Public  
availability.  
42 USC 601, 651. (A) the State provides a complete description, in accordance with paragraph (2), of the program, known as the Initiative, which it will operate in place of the programs under such parts A and D, and makes the description readily available to the public throughout the State;
- (B) the Governor provides assurances that, under the Initiative, assistance will be provided to all children in need of financial support, and the State will continue to operate an effective child support enforcement program;
- Medical  
assistance  
eligibility.  
42 USC 1396.  
42 USC 601. (C) the State agrees that, during the conduct of such test, it will continue to determine eligibility for medical assistance under the State plan approved under title XIX of the Social Security Act, applying the criteria (insofar as may be applicable to members of families with dependent children affected by the Initiative) in effect under its State plan approved under part A of title IV for the month preceding the month in which the Initiative (approved under this section) becomes effective, except that such criteria shall be deemed to have been changed to the extent necessary to comply with generally applicable changes in Federal law or regulations occurring after the date of the enactment of this Act;
- Reports. (D) the State specifies measurable performance objectives, submits an evaluation plan (including criteria for evaluating the Initiative), and agrees to submit interim and final evaluations and reports, at such time or times and containing such information, as the Secretary may require; and
- Audit.  
Public  
availability. (E) the State agrees to obtain, at least once every two years, a financial and compliance audit of the funds received under this



section and to obtain, after the close of the operation of the Initiative under this section, such an audit and make it public within the State on a timely basis and provide a copy to the Secretary within 30 days after its completion.

(2) The program description provided under paragraph (1)(A) shall describe in detail how the proposed Initiative will affect children and families, with specific reference to the principles for calculating benefits and establishing and enforcing child support obligations. The description shall also include estimates of cost and program effects and provide other relevant information necessary for the Secretary to determine whether the financial well-being of children and their families will be adversely affected by the operation of the Initiative.

(b) The Child Support Initiative proposed by the State of Wisconsin as detailed in the program description submitted to the Secretary, and the related requested waivers, shall become effective within 120 days after its submission unless the Secretary determines that the financial well-being of children in the State will be adversely affected by the Initiative. The Secretary shall notify the State in writing that, effective with the beginning of the following quarter (or of such later quarter as the State may select), the State may operate its Child Support Initiative instead of its programs of aid to families with dependent children (or, if the State had so requested, instead of its program of aid to dependent children in single-parent families) and child support enforcement in such county or counties, or on a statewide basis, as the State has indicated in its request. Except as specifically provided in subsection (c), no amount will be payable for any quarter under section 403(a) (or under section 403(a) with respect to single-parent families, if the State had so requested), 455(a), or 458 of the Social Security Act with respect to such county or counties in which the Initiative is in effect.

Effective date.

42 USC 603.

*Ante*, pp. 1311, 1312.

(c)(1) For each quarter during which such program is in effect throughout the State, the Secretary will pay to the State the sum of its proportionate share (as defined in paragraph (4)(A)) of each of the following:

(A) the amount advanced by the Secretary to all the other States (as defined in section 1101(a) of the Social Security Act) for such quarter with respect to section 403(a) (1) and (2) of such Act;

42 USC 1301.

42 USC 603.

(B) the amount so advanced by the Secretary with respect to section 403(a)(3) of such Act;

(C) the amount so advanced by the Secretary with respect to section 455(a) of such Act; and

*Ante*, p. 1311.

(D) the amount so advanced by the Secretary with respect to section 458(a) of such Act,

*Ante*, p. 1312.

reduced by so much of its proportionate share of support collections on behalf of individuals receiving aid to families with dependent children (as defined in paragraph (4)(B)) as would have been credited to the Federal Government under section 457(b) of such Act had such collections been made in the last quarter of fiscal year 1986.

*Ante*, p. 1318.

(2) If in any quarter the Initiative approved under this section is in operation in fewer than all the counties in the State, the amount paid to the State with respect to the counties to which the waiver under subsection (a) applies shall equal (in lieu of the amount specified in paragraph (1)) the proportionate share with respect to the counties in which the Initiative is operated (as defined in paragraph (5)(A)) of the amount advanced to the State under the

four authorities specified in paragraph (1) with respect to all the other counties for such quarter, reduced by so much of the proportionate share of support collections (as defined in paragraph (5)(B)) with respect to the counties in which the Initiative is operated, as would have been credited to the Federal Government under section 457(b) of such Act had such collections been made in the last quarter of fiscal year 1986.

*Ante*, p. 1318.

(3) Payment under this subsection shall be estimated by the Secretary before the beginning of each quarter during which the Initiative is in effect on the basis of the advances made under parts A and D of title IV of the Social Security Act for such quarter, and the Secretary shall make payments for such quarter on a monthly basis (with each payment made no later than the beginning of the month involved), in the amounts so estimated, and adjusted as necessary to reflect the amount of any previously made overpayment or underpayment under this section. Payment of any amount determined with respect to paragraphs (1)(A) and (1)(B) shall be made from amounts appropriated to carry out part A of title IV of the Social Security Act for the appropriate fiscal year; payment of any amount determined with respect to paragraphs (1)(C) and (1)(D) shall be made from amounts appropriated to carry out part D of title IV of the Social Security Act.

42 USC 601, 651.

(4)(A) The State's proportionate share of each amount enumerated in paragraph (1) shall be the portion of such amount that bears the same ratio to such amount as the corresponding portion advanced to the State for quarters in fiscal years 1984 through 1986 bears to the total corresponding amount advanced to all the other States for such quarters.

(B) The State's proportionate share of support collections means the amount that bears the same ratio to such collections on behalf of individuals receiving aid to families with dependent children by all the other States for the quarter involved as such collections by the State for quarters in fiscal years 1984 through 1986 bear to the total of such collections by all the other States for such quarters.

(5)(A) The proportionate share with respect to the counties in which the Initiative is operated, in the case of—

42 USC 603.

(i) the amount advanced to the State with respect to all other counties under section 403(a)(1) of the Social Security Act;

(ii) the amount so advanced under section 403(a)(3) of such Act;

*Ante*, p. 1311.

(iii) the amount so advanced under section 455(a) of such Act; and

(iv) the amount so advanced with respect to section 458(a) of such Act,

*Ante*, p. 1312.

is the sum of such amounts, each having been multiplied by the ratio of (I) the corresponding amount advanced with respect to such counties for all quarters in fiscal years 1984 through 1986 to (II) the corresponding amount advanced with respect to all the other counties in the State for all such quarters.

(B) The proportionate share of support collections for any quarter, with respect to the counties in which the Initiative is operated, means the amount that bears the same ratio to such collections on behalf of individuals receiving aid to families with dependent children with respect to all the other counties in the State for such quarter as such collections by such counties for quarters in fiscal years 1984 through 1986 bear to the total of such collections by all the other counties in the State for such quarters.



(6) If the State requests, under subsection (a), waiver of only those requirements under part A of title IV of the Social Security Act as relate to the provision of aid to dependent children in single-parent families, and continues to operate its program of aid to families with dependent children deprived by reason of the unemployment of a parent—

42 USC 601.

(A) the State's proportionate share of the amount specified in paragraph (1)(A) (and only that amount) shall be computed under paragraph (4) by application of the ratio of (i) the amount advanced to the State, under section 403(a)(1) of the Social Security Act for quarters in fiscal years 1984 through 1986 with respect to expenditures in the form of aid to dependent children in single-parent families, to (ii) the amount advanced to all the other States, under section 403(a) (1) and (2) of such Act with respect to such expenditures, rather than by application of the ratio specified in paragraph (4); and

42 USC 603.

(B) part A of title IV of such Act shall continue to apply to the State's program of aid to families with dependent children deprived by reason of the unemployment of a parent; except that section 403(a)(3) shall not apply during the period that, or in the part or parts of the State where, the Initiative is in effect.

42 USC 601.

42 USC 603.

(d)(1) The State may cease to conduct the Initiative under this section and (if it so chooses) return to the administration of its plans approved under part A and part D of title IV of the Social Security Act upon the provision to the Secretary of at least 3 months advance notice (or such greater advance notice as may be necessary so that administration of such plans will resume at the beginning of a quarter in the fiscal year).

42 USC 601, 651.

(2) The Secretary may terminate approval of the Initiative upon the giving of at least 3 months advance notice (or such greater advance notice as may be necessary as specified in paragraph (1)) to the State if it is determined that the financial well-being of children in the State (or county or counties involved) would be better achieved by the operation of programs under part A and part D of title IV of the Social Security Act.

(e) This section shall be in effect for quarters beginning after September 30, 1986, and ending before October 1, 1994.

Effective date.

SENSE OF THE CONGRESS THAT STATE AND LOCAL GOVERNMENTS SHOULD FOCUS ON THE PROBLEMS OF CHILD CUSTODY, CHILD SUPPORT, AND RELATED DOMESTIC ISSUES

SEC. 23. (a) The Congress finds that—

(1) the divorce rate in the United States has reached alarming proportions and the number of children being raised in single parent families has grown accordingly;

(2) there is a critical lack of child support enforcement, which Congress has undertaken to address through the child support enforcement program;

(3) Congress is strengthening that program to recognize the needs of all children;

(4) related domestic issues, such as visitation rights and child custody, are often intricately intertwined with the child support problem and have received inadequate consideration; and

(5) these related issues remain within the jurisdiction of State and local governments, but have a critical impact on the health and welfare of the children of the Nation.

(b) It is the sense of Congress that—

(1) State and local governments must focus on the vital issues of child support, child custody, visitation rights, and other related domestic issues that are properly within the jurisdictions of such governments;

(2) all individuals involved in the domestic relations process should recognize the seriousness of these matters to the health and welfare of our Nation's children and assign them the highest priority; and

(3) a mutual recognition of the needs of all parties involved in divorce actions will greatly enhance the health and welfare of America's children and families.

Approved August 16, 1984.

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LEGISLATIVE HISTORY—H.R. 4325:

HOUSE REPORTS: No. 98-527 (Comm. on Ways and Means) and No. 98-925 (Comm. of Conference).

SENATE REPORT No. 98-387 (Comm. on Finance).

CONGRESSIONAL RECORD:

Vol. 129 (1983): Nov. 16, considered and passed House.

Vol. 130 (1984): Apr. 25, considered and passed Senate, amended.

Aug. 1, Senate agreed to conference report.

Aug. 8, House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 20, No. 33 (1984):

Aug. 16, 1984, Presidential statement.



## CHILD SUPPORT ENFORCEMENT AMENDMENTS OF 1983

NOVEMBER 10, 1983.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means,  
submitted the following

### REPORT

[To accompany H.R. 4325]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means to whom was referred the bill (H.R. 4325) to amend part D of title IV of the Social Security Act to assure, through mandatory income withholding, incentive payments to States, and other improvements in the child support enforcement program, that all children in the United States who are in need of assistance in securing financial support from their parents will receive such assistance regardless of their circumstances, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

In the table of contents on page 2, strike out the item relating to section 16 and insert in lieu thereof the following:

Sec. 16. Inclusion of medical support in child support orders.

Sec. 17. Increased availability of Federal parent locator service to State agencies.

Sec. 18. Extension of eligibility under title XIX when support collection results in termination of AFDC eligibility.

Sec. 19. General effective date.

Page 5, lines 19 and 20, strike out "(under applicable State paternity laws)".

Page 6, lines 2 and 3, strike out "past-due" and insert in lieu thereof "overdue".

Page 7, line 3 after "agency" insert "or other entity".

Page 8, lines 2 and 3, strike out "portion thereof which represents arrearages" and insert in lieu thereof "amounts to be withheld to satisfy arrearages".

Page 14, lines 10 and 11, strike out "average support collections, and any other actual or estimated data which" and insert in lieu thereof "and average support collections, and such other actual data or estimates as".

Page 18, lines 8 and 9, strike out "the dollar amount" and insert in lieu thereof "125 percent of the dollar amount".

Page 20, lines 3 and 4, strike out "participates" and insert in lieu thereof "participate".

Page 20, lines 20 through 23, strike out "as in effect prior to such amendment (in connection with the administration of the State's child support enforcement plan approved under section 454 of such Act)".

Page 22, line 17, strike out "7(a)" and insert in lieu thereof "6(a)".

Page 22, line 23, strike out "1984" and insert in lieu thereof "1985".

Page 24, lines 17 and 18, strike out "Effective upon the enactment of this Act, section" and insert in lieu thereof "Section".

Strike out line 19 on page 28 and all that follows down through line 7 on page 33 and insert in lieu thereof the following:

#### MODIFICATIONS IN CONTENT OF SECRETARY'S ANNUAL REPORT

SEC. 12. (a) Section 452(a)(10) (C) of the social security Act is amended—

(1) by inserting "(i)" immediately after "(C)"; and

(2) by adding at the end thereof the following new clause:

"(ii) the payment status of all active child support cases in each State at the time the report is submitted (with a separate description of those cases which are interstate in nature), as more particularly set forth in subsection (f);".

(b) Section 452 of such Act is further amended by adding at the end thereof the following new subsection:

"(f)(1) The information with respect to active child support cases in each State which is required by subparagraph (C) (i) of subsection (a)(10) to be contained in any report submitted under such subsection shall specifically include the following, separately stated for each of the 12 categories of cases specified in paragraph (2):

"(A)(i) The total number of such child support cases (filed with the State agency of such State under this

PART) in which the full amount of the support obligation has been paid for all months in the particular fiscal year to which the report relates, with the amounts of the support obligations involved in those cases;

“(ii) the total number of such cases in which at least 90 percent but less than the full amount of the support obligation has been so paid, with the amounts of the support obligations established and support collections made in those cases;

“(iii) the total number of such cases in which at least 66⅔ percent but less than 90 percent of the support obligation has been so paid, with the amounts of the support obligations established and support collections made in those cases;

“(iv) The total number of such cases in which at least 33⅓ percent but less than 66⅔ percent of the support obligation has been so paid, with the amounts of the support obligations established and support collections made in those cases;

“(v) the total number of such cases in which some but less than 33⅓ percent of the support obligation has been so paid, with the amounts of the support obligations established and support collections made in those cases; and

“(vi) the total number of such cases in which no part of the support obligation has been paid, with the amounts of the obligations involved in those cases; and

“(B) the number of such child support cases (filed with the State agency of such State under this part), in each of the six subclasses described in clauses (i) through (vi) of subparagraph (A) within each of such categories, which were filed in such State on behalf of children residing in another State or against parents residing in another State in the particular fiscal year to which the report relates, specifying (for each such subclass)—

“(i) the total number of such cases which were initiated in the State of filing, with the amounts of the support obligations established and support collections made in those cases,

“(ii) the number of such cases which were initiated in another State (identifying each such State by name) in which State of filing was requested to take action to establish paternity, obtain support obligations, or collect support,

“(iii) the number of the cases described in clause (ii) in which action was taken in response to the request, and

“(iv) the actions (described in clause (ii)) which were so taken.

Such information shall also include any other matter which the Secretary may deem necessary for an effective



assessment of the current status of interstate child support collections.

“(2) The categories of child support cases (filed with the State agency of a State under this part) with respect to which information is to be provided in the report, under subparagraphs (A) and (B) of paragraph (1), shall include—

“(A) four categories of cases in which the support rights involved are assigned to the State under section 402(a)(26) and in which the child is currently receiving aid to families with dependent children, as follows:

“(i) all such cases in which a support obligation has been established,

“(ii) all such cases in which a new or increased support obligation was so established during the particular fiscal year to which the report relates,

“(iii) those cases described in clause (i) in which support was collected under this part during such fiscal year, and

“(iv) those cases described in clause (ii) in which support was collected under this part during such fiscal year;

“(B) four categories of cases in which the support rights involved are assigned to the State under section 402(a)(26) but in which the child is not currently receiving aid to families with dependent children, as follows:

“(i) all such cases in which a support obligation has been established.

“(ii) all such cases in which a new or increased support obligation was so established during the particular fiscal year to which the report relates,

“(iii) those cases described in clause (i) in which support was collected under this part during such fiscal year, and

“(iv) those cases described in clause (ii) in which support was collected under this part during such fiscal year; and

“(C) four categories of cases to which neither subparagraph (A) nor subparagraph (B) applies, as follows:

“(i) all such cases in which a support obligation has been established,

“(ii) all such cases in which a new or increased support obligation was so established during the particular fiscal year to which the report relates,

“(iii) those cases described in clause (i) in which support was collected under this part during such fiscal year, and

“(iv) those cases described in clause (ii) in which support was collected under this part during such fiscal year.”.

(c) The amendments made by this section shall apply with respect to reports (under section 452(a)(10) of the Social Security Act) for fiscal years beginning on or after October 1, 1986.



Page 35, before the period in line 21, insert the following: “; except that costs incurred by such a Commission or its members for transportation within the State, and such other costs incurred by the Commission or its members as may be specifically allowed by the Secretary in regulations, shall be considered for purposes of section 455(a)(1) of the Social Security Act to be expenditures for the operation of the State’s plan approved under section 454 of such Act”.

Page 38, line 4, strike out the period and insert in lieu thereof a comma.

Page 39, after line 2, insert the following new section:

#### INCLUSION OF MEDICAL SUPPORT IN CHILD SUPPORT ORDERS

SEC. 16. The Secretary of Health and Human Services shall issue regulations to require that State agencies administering the child support enforcement program under part D of title IV of the Social Security Act petition for the inclusion of medical support as part of any child support order whenever health care coverage is available to the absent parent at a reasonable cost. Such regulations shall also provide for improved information exchange between such State agencies and the State agencies administering the State medicaid programs under title XIX of such Act with respect to the availability of health insurance coverage.

Page 39, after line 2, insert the following new section:

#### INCREASED AVAILABILITY OF FEDERAL PARENT LOCATOR SERVICE TO STATE AGENCIES

SEC. 17. Section 453(f) of the Social Security Act is amended by striking out “, after determining that the absent parent cannot be located through the procedures under the control of such State agencies,”.

Page 39, after line 2, insert the following new section:

#### EXTENSION OF ELIGIBILITY UNDER TITLE XIX WHEN SUPPORT COLLECTION RESULTS IN TERMINATION OF AFDC ELIGIBILITY

SEC. 18. Section 406 of the Social Security Act is amended by adding at the end thereof the following new subsection:

“(h) Each dependent child, and each relative with whom such a child is living (including the spouse of such relative as described in subsection (b)), who becomes ineligible for aid to families with dependent children as a result (wholly or partly) of the collection or increased collection of child or spousal support under part D, and who has received such aid in at least three of the six months immediately preceding the month in which such ineligibility begins, shall be deemed to be a recipient of aid to families with dependent children for purposes of title XIX for an additional four calendar months beginning with the month in which such ineligibility begins.”.

Page 39, line 4, strike out "Sec. 16." and insert in lieu thereof "Sec. 19."

## I. SUMMARY EXPLANATION OF H.R. 4325: THE CHILD SUPPORT ENFORCEMENT AMENDMENTS OF 1983

### I. STATEMENT OF PURPOSE FOR THE TITLE IV-D CHILD SUPPORT ENFORCEMENT (CSE) PROGRAM

A "Purpose" section would be added stating that assistance in obtaining support be made available to all AFDC and non-AFDC children for whom such assistance from the IV-D program is requested. (Report language will make clear that this has always been the intent of the IV-D program.)

### II. STATE REQUIREMENTS

The following requirements would be effective October 1, 1985; however, if the State can show with detailed evidence that any of the requirements in A through H below would not be effective or efficient in that State, the Secretary may waive that requirement for a specified period of time.

#### A. *Income withholding*

1. (a) In the case of any noncustodial parent against whom a support order is or has been issued in the State, whenever child support arrearages occur (or earlier at State option), the State must provide for the withholding of wages for AFDC and non-AFDC IV-D cases, or for anyone who applies for IV-D services in order to initiate withholding, under conditions and procedures established in accordance with the requirements summarized in 2-10 below. (b) The amount withheld, subject to Consumer Credit Protection Act limitations, must be the amount of current support that is owed, plus any arrearages (the amount withheld for arrearages may be subject to limitations provided under State law), plus a fee (the amount to be established by the State) to be paid to the employer.

2. Withholding must begin when the arrearage reaches an amount equal to one month of support payments. A State may begin withholding at some earlier point; and must begin withholding earlier if requested by the absent parent.

3. (a) The initiation of withholding procedures must be automatic in the case of IV-D (AFDC and non-AFDC) cases that meet the conditions summarized below, and can be triggered for other families by the obligee filing an application for services with the IV-D agency. (b) The execution of withholding orders must occur without the need for amendment of the support order.

4. The withholding of income for child support payments must be administered by a public agency designated by the State (such as the IV-D agency). The State may establish or allow procedures which provide for the collection from employers of withheld support payments and disbursement to obligee families through other than a public agency, so long as such procedures are publicly accountable, allow prompt disbursement, and permit the keeping of records to monitor and document the payment of support.

5. (a) The obligor must get prior notice of withholding action and notification of procedures to be followed to contest the proposed withholding because of mistakes of fact; and the notification and other procedures must comport with the due process procedures of the State. (b) The final decision as to whether or not withholding will occur must be made no later than 30 days after the date the obligor parent is notified of proposed income withholding actions.

6. Employers of individuals for whom withholding proceedings have been established, upon receiving proper notice from the State to begin withholding for child support payments (which must be a separate document containing no information other than the amount to be withheld and the amount of the fee to be retained by the employer, or other information necessary for the employer to comply with the withholding order), must be (a) required to withhold from wages and forward to the appropriate agency (or comply with state approved alternative procedures summarized in II.A.(5) above) the amount specified in the notice plus a fee to be paid to the employer (unless any such fee is waived by the employer); (b) allowed to combine all amounts withheld from employees for child support into one check to the appropriate agency, and otherwise simplify the withholding process; (c) held liable to the State (on behalf of the State in AFDC cases and on behalf of the obligee in non-AFDC cases) for any amount they fail to withhold, and (d) subject to a fine if an employee is discharged from employment, refused employment or subjected to disciplinary action because of withholding for child support even if there are other withholdings for the same employee for other purposes.

7. Withholding for child support payment must take priority over any legal process against the same wage.

8. Wages must be subject to withholding; and, the State may make other income subject to withholding, such as, but not limited to, commissions and bonuses, retirement benefits, pensions, workers compensation, dividends, royalties and trust accounts.

9. The state must make provision for withholding on interstate cases.

10. There must be provision for terminating withholding.

11. All child support orders issued or modified in the State after October 1, 1985 must include provision for withholding of wages if arrearages occur. Withholding must be applied under the conditions and procedures established by the State for cases that are not IV-D cases in accordance with the requirements and procedures summarized in items 1-10 above for IV-D cases.

*B. Procedures to improve establishment of, compliance with, and enforcement of court order*

States must make reasonable efforts to expedite and otherwise improve the establishment of, compliance with, and enforcement of obligations resulting from a court or administrative order. States should make reasonable efforts to reduce adversary nature of support proceedings; to achieve better understanding and communication between obligee and obligor regarding the support obligation and visitation rights, agreements and arrangements (in order to obtain greater assurance of compliance with all obligations, rights and agreements arising under or related to the court or adminis-



trative order); to reduce court backlogs so that support decisions can be made promptly.

### *C. State income tax refund offsets*

States that have State income taxes must provide for the withholding of any State tax refund payable to a non-custodial parent who owes past-due child support payments. These tax refund withholding procedures must be applicable to AFDC and, at the option of the State, to non-AFDC cases and must be used for interstate as well as intrastate cases. The obligor must get prior notice of the proposed offset and notification of procedures to be followed to contest the amount of past-due support; and the offset procedure must comport with the due process procedures of the State.

### *D. Liens against property*

States must establish procedures for imposing liens against both real and personal property for amounts of past-due support owed by a State resident or an individual who owns such property in the State.

### *E. Paternity statute of limitations*

State paternity laws must permit the establishment of paternity for both AFDC and non-AFDC children until a child's 18th birthday.

### *F. Imposition of security or bond*

States must provide for the imposition of security, a bond, or other guarantee to secure payment in the case of absent parents who have a pattern of past-due support payments. The obligor must get prior notice and notification of procedures to be followed to contest the proposed security or bond; the procedure must comport with the due process procedures of the State.

### *G. Providing information on past-due support to credit agencies*

States must make available to consumer credit agencies, at the request of such agencies, information regarding child support arrearages. The State must make available information on arrearages in excess of \$1,000 and may make available information on smaller arrearages. The obligor must receive prior notice of the release of such information which indicates the procedures to be followed to contest the proposed release of information. The notification and procedures for contesting the proposed release of information to credit agencies must comport with the due process procedures in the State. The State may charge a fee to the credit agencies who request and receive this information which cannot exceed the cost to the State of providing the information.

### *H. Tracking and monitoring support payments*

When a State has instituted the income withholding requirements and procedures, and established the public agency or alternative publicly accountable procedures that will administer income withholding, summarized in II(A) above, the State must provide that, at the request of the absent or custodial parent, child support payments must be made through the agency that administers



income withholding, even though there are no arrearages and income withholding procedures have not been applied. In such a case, the State must charge a fee equal to any cost incurred by the State, up to a maximum of \$25 per year.

*I. Continue child support enforcement services for families that lose AFDC eligibility*

In order to provide for the continuation of child support enforcement services, the State must provide that AFDC recipients whose eligibility for AFDC is terminated due to the receipt of (or an increase in) child support payment or for other reasons will be automatically transferred from AFDC to non-AFDC status under the State IV-D program, without requiring reapplication or the payment of fees; and will be provided child support enforcement services on the same basis and under the same conditions as other non-AFDC cases.

*J. Enforcement of both child and spousal support*

States must pursue the enforcement and collection of spousal support as well as child support when amounts for both are combined in a single order. (This is presently a State option.)

*K. Publicize the availability of child support enforcement services*

States must frequently publicize, through public service announcements and other means, the availability of child support enforcement services, together with information as to the application fee for such services, if any, and a telephone number or postal address to be used to obtain additional information.

### III. STATE CHILD SUPPORT MONITORING AND INCOME WITHHOLDING PROCEDURES

The provisions in current law under which 90 percent Federal matching funds are available for the development of automated management systems will be amended to make clear that, if a State meets the requirements in current law, these matching funds can be used by States for the development and improvement of procedures necessary to implement and effectively carry out the income withholding and other requirements contained in this bill pertaining to the monitoring of child support payments, keeping accurate records regarding the payment of child support, and providing prompt notification to appropriate officials of any arrearages that occur.

### IV. FEDERAL CHILD SUPPORT FINANCING PROVISIONS

*A. Incentive payments*

1. The current 12 percent incentive payment, which is based solely on collections made on behalf of AFDC families, will be repealed as of October 1, 1985. The new incentive payment described below, which is based on collections for both AFDC and non-AFDC families, will be effective October 1, 1985. However, for FY 1986 only, States will receive the higher of the amount due them under

the new incentive structure or 80 percent of what they would have received under current law.

2. The basic incentive payment will be 4 percent of a State's AFDC collections and 4 percent of a State's non-AFDC collections.

3. To the extent that AFDC or non-AFDC collections exceed combined administrative costs for both AFDC and non-AFDC, higher incentives will be paid on a sliding scale up to 10 percent of AFDC and 10 percent of non-AFDC collections, as follows:

AFDC incentive		Non-AFDC incentive	
Ratio of AFDC collections to combined AFDC/non-AFDC administrative costs	Incentive equal to this percent of AFDC collections	Ratio of non-AFDC collections to combined AFDC/non-AFDC administrative costs	Incentive equal to this percent of non-AFDC collections
1.0:1.....	5.0	1.0:1.....	5.0
1.1:1.....	5.5	1.1:1.....	5.5
1.2:1.....	6.0	1.2:1.....	6.0
1.3:1.....	6.5	1.3:1.....	6.5
1.4:1.....	7.0	1.4:1.....	7.0
1.5:1.....	7.5	1.5:1.....	7.5
1.6:1.....	8.0	1.6:1.....	8.0
1.7:1.....	8.5	1.7:1.....	8.5
1.8:1.....	9.0	1.8:1.....	9.0
1.9:1.....	9.5	1.9:1.....	9.5
2.0:1.....	10.0	2.0:1.....	10.0

4. The total dollar amount of incentive paid for non-AFDC collections will be capped at an amount equal to 125 percent of the state's incentive payment for AFDC collections.

5. At state option, the laboratory costs of determining paternity may be deducted from combined administrative costs for purposes of computing incentive payments.

6. Where part of the cost of child support operations is borne by local governments, incentive payments must be passed through to local levels.

7. Incentive funds must be estimated and projected on an annual basis so that States will have an estimate in advance as to the amount of their incentive payments.

8. Amounts collected in interstate cases will be credited, for purposes of computing incentive payments, to both initiating and responding states.

#### *B. Special funds for Interstate collections*

For each fiscal year beginning with fiscal 1985, \$15 million will be available to the Secretary of HHS to fund special projects developed by States with the objective of utilizing innovative techniques or procedures for, and otherwise improving, child support collections in interstate cases.

#### *C. Administrative match:*

The Federal IV-D matching rate will remain at 70 percent.

#### *D. Audit and penalties*

1. Graduated penalties of 2, 3, and 5 percent of AFDC matching, with correction periods provided to improve performance, will replace current penalty provisions effective October 1, 1983.

## 2. The audit schedule will be put on a 3-year cycle

### V. OTHER PROVISIONS

A. Effective upon enactment, the Secretary of HHS is directed to issue regulations requiring State IV-D agencies to petition for inclusion of medical support as part of any child support order whenever such health care coverage is available to the absent parent at a reasonable cost.

B. Effective upon enactment, AFDC recipients who have received AFDC for at least three of the last six months, and who lose eligibility for AFDC due to an increase in child support payments, will continue to be eligible for Medicaid for four months following their loss of AFDC eligibility.

C. Effective upon enactment, the requirement that States, in effect, must exhaust all State child support locator resources before they may request the assistance of the Federal parent locator service is repealed. In other words, States will be able to request the assistance of the Federal parent locator service without the requirement that they first exhaust all State resources.

D. The content of the annual CSE report by Secretary will be modified, effective beginning FY 1987, to include the following information:

(1.) The number of AFDC and non-AFDC cases in which there are preexisting or newly established support obligations, the amount of those obligations, the number of such cases with collections and the amount collected;

(2.) the number of cases with support obligations in which 33-66%, under 33% and 0% was paid; and

(3.) data regarding interstate collections.

E. Current law will be amended to provide that, effective October 1, 1983, the support rights of children living in foster care homes under title IV-E of the Social Security Act be assigned to the State where appropriate, and collected by the State IV-D agency as was provided for children in foster care under IV-A prior to the enactment of the Adoption Assistance and Child Welfare Act of 1980.

F. Current law will be amended to provide for waiver authority for the IV-D Child Support Enforcement (CSE) program under section 1115 of the Social Security Act, under the following conditions: (a) the intent of the requested waiver must be to test modifications that will improve the financial well-being of children; (b) a waiver will not be allowed for any modification that would disadvantage children in need of support; and (c) the requested waiver will not result in an increase in Federal AFDC cost.

G. The Department of HHS will be required to approve requests from the State of Wisconsin for waivers of Federal IV-D CSE and IV-A AFDC requirements that will allow the State to continue to receive Federal CSE and AFDC matching funds while testing modifications in both programs contained in its "Child Support Initiative," if the requested waivers meet the conditions summarized in 1 and 2 below.

1. The purposes of the requested waiver authority should be (a) to improve the financial well-being of children; (b) to obtain flexibility in the manner and procedures to be used in provid-



ing IV-D CSE assistance to single parent households in gaining adequate child support, including the provision of IV-D services whether or not a family formally applies for such services; (c) to permit the State to test alternative IV-D and AFDC procedures in different sub-state areas without being out of compliance with "statewideness" requirements; (d) to permit the State to establish alternative arrangements for the payment of child support in order to reinforce parental responsibility for the child; and (e) to permit the State to use Federal AFDC matching funds to insure that there is an adequate level of support when the contribution of the absent parent, by itself, is inadequate (including the provision of such support to non-AFDC families without requiring them to reduce income and assets to the prevailing AFDC eligibility level);

2. The alternative IV-D CSE and AFDC procedures or modifications allowed under the requested waivers must not disadvantage children in need of child support or make children in the State worse off financially than they would be without the modifications in the State AFDC and IV-D program. The State can receive no more Federal AFDC funds than they would without the modifications.

#### VI. STATE COMMISSIONS ON CHILD SUPPORT

1. The Governor of each State will be required to appoint a State Commission on Child Support. The Commission must include representation from all aspects of the child support system, including custodial and non-custodial parents, the IV-D agency, the judiciary, the governor, the legislature, child welfare and social services agencies, and others.

2. Each State Commission should examine the functioning of the State child support system with regard to securing support and parental involvement for both AFDC and non-AFDC children, including but not limited to such specific problems as:

Visitation;

Establishment of appropriate objective standards for support;

Enforcement of interstate obligations; and

Additional federal or state legislation needed to obtain support for all children.

3. The Commissions should be established promptly and should make reports on their findings available to the public by October 1, 1985.

4. Cost of operating the commissions will not be eligible for federal administrative match; except for costs incurred by the Commission or its members for transportation within the State, and such other costs incurred as may be specifically allowed by the Secretary of HHS, which will be matched as State IV-D administrative expenses.

5. Any state which has in place objective standards for child support obligations or which has had a commission or council within the last five years is not required to establish a commission under this legislation. Furthermore, the Secretary may waive the requirement for a Commission at the request of a State if the Secretary determines the State is making reasonable progress in improving its child support enforcement program.



## II. COMPARISON WITH PRESENT LAW

Item	Present law	H.R. 4325
1. Statement of purpose (sec. 2)	Funds are authorized for the purpose of "enforcing the support obligations owed by absent parents to their children and the spouse (or former spouse) with whom such children are living, locating absent parents, establishing paternity, and obtaining child and spousal support . . ."	Amends present law by adding the following language: "and assuring that assistance in obtaining support will be available under this part to all children (whether or not eligible for aid under part A) for whom such assistance is requested."
2. Required state procedures (sec. 3)	The Federal statute generally does not specify the types of procedures States must use in operating their programs. Sec. 454(13) requires the States to comply with such requirements and standards as the Secretary determines to be necessary to the establishment of an effective program.	Effective upon enactment. States are required to enact laws establishing the following procedures:
(a) Income withholding		<p>(1) In the case of any noncustodial parent against whom a support order is or has been issued in the State, whenever child support arrearages occur (or earlier at State option), the State must provide for the withholding of wages for AFDC and non-AFDC IV-D cases, or for anyone who applies for IV-D services in order to initiate withholding, under conditions and procedures established in accordance with the requirements and procedures summarized below. (2) The amount withheld, subject to Consumer Credit Protection Act limitations, must be the amount of current support that is owed, plus any arrearages (the amount withheld for arrearages may be subject to limitations provided under State law), plus a fee (the amount to be established by the State) to be paid to the employer.</p> <p>Withholding must begin when the arrearage reaches an amount equal to one month of support payments. A State may begin withholding at some earlier point; and must begin withholding earlier if requested by the absent parent.</p> <p>(1) The initiation of withholding procedures must be automatic in the case of IV-D (AFDC and non-AFDC) cases that meet the conditions summarized below, and can be triggered for other families by the obligee filing an application for services with the IV-D agency. (2) The execution of withholding orders must occur without the need for amendment of the support order.</p>

## II. Comparison with Present Law—Continued

Item	Present law	H.R. 4325
		<p>The withholding of income for child support payments must be administered by a public agency designated by the state (such as the IV-D agency). The State may establish or allow procedures which provide for the collection from employers of withheld support payments and disbursement to obligee families through other than a public agency, so long as such procedures are publicly accountable, allow prompt disbursement, and permit the keeping of records to monitor and document the payment of support.</p> <p>(1) The obligor must get prior notice of withholding action and notification of procedures to be followed to contest the proposed withholding because of mistakes of fact; and the notification and other procedures must comport with the due process procedures of the state.</p> <p>(2) The final decision as to whether or not withholding will occur must be made no later than 30 days after the date the obligor parent is notified of proposed income withholding actions.</p> <p>Employers of individuals for whom withholding proceedings have been established, upon receiving proper notice from the State to begin withholding for child support payments (which must be a separate document containing no information other than the amount to be withheld and the amount of the fee to be retained by the employer, or other information necessary for the employer to comply with the withholding order), must be (1) required to withhold from wages and forward to the appropriate agency (or comply with state approved alternative procedures summarized above) the amount specified in the notice plus a fee to be paid to the employer (unless any such fee is waived by the employer); (2) allowed to combine all amounts withheld from employees for child support into one check to the appropriate agency, and otherwise simplify the withholding process; (3) held liable to the State (on behalf of the State in AFDC cases and on behalf of the obligee in non-AFDC cases) for any amount they fail to withhold, and (4) subject to a fine if an employee is discharged from employment, refused employment or subjected to disciplinary action because of withholding for child support, even if there are other withholdings for the same employee for other purposes.</p> <p>Withholding for child support payment must take priority over any legal process against the same wage.</p>

## II. Comparison with Present Law—Continued

Item	Present law	H.R. 4325
(b) Procedures to improve establishment of, compliance with, and enforcement of support orders.	<p>Wages must be subject to withholding; and, the State may make other income subject to withholding, such as, but not limited to, commissions and bonuses, retirement benefits, pensions, workers compensation, dividends, royalties and trust accounts.</p> <p>The state must make provision for withholding on interstate cases.</p> <p>There must be provision for terminating withholding.</p> <p>All child support orders issued or modified in the State after October 1, 1985 must include provision for withholding of wages if arrearages occur. Withholding must be applied under the conditions and procedures established by the State for cases that are not IV-D cases, and in accordance with the requirements and procedures summarized above for IV-D cases.</p>	<p>States must make reasonable efforts to expedite and otherwise improve the establishment of, compliance with, and enforcement of court or administrative support orders. (Report language indicates Congressional intent that States make reasonable efforts to reduce the adversary nature of support proceedings; achieve better understanding and communication between obligee and obligor regarding the support obligation and visitation rights, agreements and arrangements; and reduce court backlogs so that support decisions can be made properly.)</p>
(c) State income tax refund offsets.	<p>Requires States, at the request of the State IV-D agency, to withhold from any tax refund otherwise payable amounts of past-due support owed by an absent parent for the benefit of an AFDC child, or, at the option of the State, any child who is receiving IV-D services. Provision must be made for withholding for interstate cases.</p>	<p>Requires notice to the absent parent of the proposed reduction and the procedures he must follow if he wishes to contest the action. Procedures must be in compliance with due process procedures of the State.</p>
(d) Liens against property	<p>Requires States to have procedures for imposing liens against real and personal property for amounts of past-due support owed by a State resident or an individual who owns property in the State.</p>	<p>State paternity laws must permit the establishment of paternity until a child's 18th birthday.</p>
(e) Paternity statute of limitations.		

## II. Comparison with Present Law—Continued

Item	Present law	H.R. 4325
(f) Security or bond in certain cases.		Requires States to have procedures to require in appropriate cases that an individual give security, post a bond, or give some other type of guarantee to secure support obligations to absent parents who have a pattern of past-due support. The individual must receive prior notice, including procedures to be followed to contest the action. Procedures must be in compliance with due process procedures of the State.
(g) Providing information on past-due support to credit agencies.		Requires States to make available to consumer credit bureau organizations, at the request of such agencies, the amount of past-due support owed by absent parents residing in the State. States must make available information on arrearages in excess of \$1,000, and may make available information on smaller arrearages. An individual must be notified of the proposed action and given reasonable opportunity to contest the accuracy of the information involved. The notification and procedures for contesting the proposed release of information to credit agencies must be in compliance with the due process procedures in the State. The State may charge a fee to the credit agencies who request and receive this information which cannot exceed the cost to the State of providing the information.
(h) Tracking and monitoring of support payments by public agency.		The State must provide that, at the request of either the custodial or absent parent, child support payments must be made through the agency that administers the State's income withholding system, regardless of whether there is an arrearage which requires withholding to occur. The State must charge a fee equal to the cost incurred by the State for these services, up to a maximum of \$25 a year. Exemption authority—The Secretary may grant an exemption, subject to later review, of the required procedures, if the State can demonstrate that such procedures will not improve the efficiency and effectiveness of the State IV-D program.
		Effective date of above requirements—Oct. 1, 1985.



## II. Comparison with Present Law—Continued

Item	Present law	H.R. 4325
3. Ninety percent matching for automated management systems used in income withholding and other required procedures (sec. 4).	Ninety percent Federal matching is available, on an open-end entitlement basis, to States that elect to establish an automatic data processing and information retrieval system designed to assist management in the administration of the State plan, so as to control, account for, and monitor all the factors in the support enforcement collection and paternity determination process. Funds may be used to plan, design, develop, and install or enhance the system. The Secretary must approve the system as meeting specified conditions before matching is available.	Maintains present law. In addition, specifies that if a State meets the requirements in present law, matching funds may be used for the development and improvement of the income withholding and other procedures required in the bill (described in item 2) through the monitoring of child support payments, the maintenance of accurate records regarding the payment of child support, and the provision of prompt notification to appropriate officials with respect to any arrearages that occur.
4. Continuation of services for families that lose AFDC eligibility (sec. 5).	There is no special provision requiring States to automatically continue support collection activities on behalf of families when they lose eligibility for AFDC.	Also specifies that the 90 percent matching is available to pay for the acquisition of computer hardware. Effective the first quarter after enactment. States must provide that AFDC recipients whose eligibility for AFDC is terminated due to the receipt of (or an increase in) child support payments or for other reasons will be automatically transferred from AFDC to non-AFDC status under the State IV-D program, without requiring reapplication or the payment of fees; and will be provided child support enforcement services on the same basis and under the same conditions as other non-AFDC cases.
5. Federal incentive payments (sec. 6).	A 12 percent incentive payment (financed out of the Federal share of collections) is made to States and localities for collections made on behalf of AFDC families. The estimated amount of incentives paid to jurisdictions in fiscal year 1983 is \$122 million. (The amount of the incentive was reduced from 15 to 12 percent by Public Law 97-248, effective Oct. 1, 1983.	Effective Oct. 1, 1985. Repeals the 12% incentive payment, effective October 1, 1985. Establishes new incentives based on collections on behalf of both AFDC and non-AFDC families. Requires the Secretary to make incentive payment as follows: The basic incentive payment will be equal to 4% of the State's AFDC collections, and 4% of its non-AFDC collections (subject to the cap described below). To the extent AFDC or non-AFDC collections exceed combined administrative costs for both AFDC and non-AFDC, higher incentives will be paid on a sliding scale up to 10% of non-AFDC collections, according to the following cost/collection ratios:
		AFDC incentive
		Ratio of AFDC collections to combined AFDC/non-AFDC administrative costs
		Incentive equal to this percent of AFDC collections
		1.0:1 5.0
		1.1:1 5.5
		1.2:1 6.0
		1.3:1 6.5
		1.4:1 7.0
		1.5:1 7.5
		1.6:1 8.0

## II. Comparison with Present Law—Continued

Item	Present law	H.R. 4325
AFDC incentive		
	Ratio of AFDC collections to combined AFDC/non-AFDC administrative costs	Incentive equal to this percent of AFDC collections
	1.7:1	8.5
	1.8:1	9.0
	1.9:1	9.5
	2.0:1	10.0
Non-AFDC incentive		
	Ratio of non-AFDC collections to combined AFDC/non-AFDC administrative costs	Incentive equal to this percent of non-AFDC collections
	1.0:1	5.0
	1.1:1	5.5
	1.2:1	6.0
	1.3:1	6.5
	1.4:1	7.0
	1.5:1	7.5
	1.6:1	8.0
	1.7:1	8.5
	1.8:1	9.0
	1.9:1	9.5
	2.0:1	10.0

The total dollar amount of incentive paid for non-AFDC collections will be capped at an amount equal to 125 percent of the State's incentive payment for AFDC collections.

At State option, the laboratory costs of determining paternity may be deducted from combined administrative costs for purposes of computing incentive payments.

Under a pass-through requirement, States must assure that localities which participate in the costs of collecting support will receive a share of any incentive payments.

Incentive funds must be estimated and projected on an annual basis so that States will know in advance what their payments will be.

Amounts collected in interstate cases will be credited, for purposes of computing incentive payments, to both initiating and responding States.

Effective October 1, 1985.—However, for FY 1986 only, States will receive the higher of the amount due them under the new incentive provision or 80 percent of what they would have received under the existing 12 percent incentive program.

## II. Comparison with Present Law—Continued

Item	Present law	H.R. 4325
6. Special project grants to promote improvements in interstate enforcement (sec. 7).	There is no special provision for funding of interstate activities.	Beginning with fiscal year 1985 \$15 million a year will be available to the Secretary to fund special projects developed by States with the objective of using innovative techniques or procedures for, and otherwise improving, child support collections in interstate cases. (Report language makes clear Congressional intent that these special funds should be used by a State to augment and provide existing State efforts to pursue and respond to interstate cases.)
7. Periodic review of effectiveness of State programs; modification of penalty (sec. 8).	The Secretary is required to conduct an annual audit of each State's child support enforcement program to determine whether it complies with the requirements of the Federal statute. If the Secretary finds that the State has failed to have an effective program meeting the specified requirements, he must reduce the amount of the Federal matching payable to the State under the AFDC program by 5 percent. This penalty has never been imposed. Legislation has periodically been enacted to suspend its implementation.	The present audit and penalty requirements are repealed. The Secretary is required to conduct a review of each State's program at least every 3 years to determine whether the program substantially complies with the requirements of the statute, and to evaluate its effectiveness in carrying out the purposes of the Federal child support law. If the Secretary finds that a State has not met the requirements of the law, and there has not been corrective action to bring about substantial compliance, the amount of the State's AFDC matching must be reduced by not more than 2 percent, or, if the finding is the second consecutive such finding, not more than 3 percent, or, if the finding is the third or subsequent consecutive such finding, not more than 5 percent. The reduction must continue until the first quarter throughout which the program is found to meet the requirements. Effective October 1, 1983.
9. Extension of Sec. 1115 demonstration authority to child support enforcement program (sec. 9).	Sec. 1115 of the Social Security Act authorizes the Secretary to grant waivers to States in the operation of their AFDC and medicaid programs, if he determines that the waivers are necessary to enable the States to conduct experimental, pilot, or demonstration projects which are likely to assist in promoting the objective of the programs.	Expands the sec. 1115 demonstration authority to include the child support enforcement program under the following conditions: (a) the intent of the requested waiver must be to test modifications that will improve the financial well-being of children; (b) a waiver will not be allowed for any modification that would disadvantage children in need of support; and (c) the requested waiver will not result in an increase in Federal AFDC costs.

## II. Comparison with Present Law—Continued

Item	Present law	H.R. 4325
9. Child support enforcement for certain children in foster care (sec. 10).	There is no specific authority in the law for collection of child support on behalf of children who are placed in foster care. This authority was deleted when the foster care program was transferred from title IV-A to title IV-E.	Requires State child support agencies to undertake child support collections on behalf of children receiving foster care maintenance payments under title IV-E of the Social Security Act, if an assignment of rights to support to the State has been secured by the foster care agency. Requires States to take steps, where appropriate, to secure an assignment to the State of any rights to support on behalf of each child receiving foster care maintenance payments under the title IV-E foster care program. Effective October 1, 1983, and applicable to collections made on or after that date.
10. Enforcement with respect to both child and spousal support (sec. 11).	States have the option of collecting spousal support when amounts for both the child and the spouse are combined in a single order, if the support action has been established with respect to the spouse.	Collection by the State of spousal support under the specified circumstances is required, rather than allowed. Effective Oct. 1, 1985.
11. Modifications in content of Secretary's annual report (sec. 12).	Within 3 months after the close of each fiscal year, the Secretary must submit an annual report to the Congress on child support program activities. The statute specifies certain data which must be included in the report.	The information required to be included in the annual report is modified to include the following: 1. The number of AFDC and non-AFDC cases in which there are preexisting or newly established support obligations, the amount of those obligations, the number of such cases with collections and the amount collected; 2. the number of cases with support obligations in which 33-66 percent, under 33 percent and 0 percent was paid; and 3. data regarding interstate collection. Effective for reports due beginning with fiscal year 1987.
12. Requirement to publicize the availability of child support services (sec. 13).	No provision.	States must frequently publicize, through public service announcements and other means, the availability of child support enforcement services, together with information as to the application fee for such services, if any, and a telephone number or postal address to be used to obtain additional information. Effective October 1, 1985



## II. Comparison with Present Law—Continued

Item	Present law	H.R. 4325
13. State commissions on child support (sec. 14).	No provision.	<p>The Governor of each State is required to appoint a State Commission on Child Support. The Commission must include representation from all aspects of the child support system, including custodial and non-custodial parents, the IV-D agency, the judiciary, the governor, the legislature, child welfare and social services agencies, and others.</p> <p>Each State Commission is to examine the functioning of the State child support system with regard to securing support and parental involvement for both AFDC and non-AFDC children, including but not limited to such specific problems as:</p> <ul style="list-style-type: none"> <li>visitation;</li> <li>establishment of appropriate objective standards for support;</li> <li>enforcement of interstate obligations; and</li> <li>additional Federal or State legislation needed to obtain support for all children.</li> </ul> <p>The Commissions shall submit to the Governor and make available to the public, reports on their findings and recommendations no later than Oct. 1, 1985.</p> <p>Costs of operating the commissions will be eligible for Federal matching only in the case of costs for transportation within the State and such other costs as are specifically allowed by the Secretary in regulations.</p> <p>The Secretary may waive the requirement for a Commission at the request of a State if he determines that the State has in place objective standards for child support obligations, has had a commission or council within the last five years, or is making reasonable progress in improving its child support enforcement program.</p>

## II. Comparison with Present Law—Continued

Item	Present law	H.R. 4325
14. Wisconsin child support initiative (sec. 15)	No provisions	<p>The Department of HHS will be required to approve requests from the State of Wisconsin for waivers of Federal IV-D CSE and IV-A AFDC requirements that will allow the State to continue to receive Federal CSE and AFDC matching funds while testing modifications in both programs contained in its "Child Support Initiative," if the requested waivers meet the conditions summarized below.</p> <p>The purposes of the requested waiver authority should be (a) to improve the financial well-being of children; (b) to obtain flexibility in the manner and procedures to be used in providing IV-D CSE assistance to single parent households in gaining adequate child support, including the provision of IV-D services whether or not a family formally applies for such services; (c) to permit the State to test alternative IV-D and AFDC procedures in different sub-state areas without being out of compliance with "statewide" requirements; (d) to permit the State to establish alternative arrangements for the payment of child support in order to reinforce parental responsibility for the child; and (e) to permit the State to use Federal AFDC matching funds to insure that there is an adequate level of support when the contribution of the absent parent, by itself, is inadequate (including the provision of such support to non-AFDC families without requiring them to reduce income and assets to the prevailing AFDC eligibility level).</p> <p>The alternative IV-D CSE and AFDC procedures or modifications allowed under the requested waivers must not disadvantage children in need of child support or make children in the State worse off financially than they would be without the modifications in the State AFDC and IV-D program. The State can receive no more Federal AFDC funds than they would without the modifications.</p>
15. Requirement to include medical support as part of any child support order (sec. 16).	There is no provision in the child support statute that requires State agencies to undertake efforts to include medical support as part of any child support order.	<p>Effective upon enactment.</p> <p>The Secretary of Health and Human Services is required to issue regulations to require State agencies to petition to include medical support as part of any child support order whenever health care coverage is available to the absent parent at a reasonable cost. The regulations must also provide for improve information exchange between the State IV-D agencies and the medical agencies with respect to the availability of health insurance coverage.</p> <p>Effective upon enactment.</p>

## II. Comparison with Present Law—Continued

Item	Present law	H.R. 4325
16. Increased availability of Federal parent locator service to State agencies (sec. 17)	The Federal statute requires operation by the Federal Government of a Parent Locator Service (PLS) to assist States in locating absent parents. States may use the Federal PLS only after there has been a determination that the absent parent cannot be located through procedures under the control of the State child support agency.	Repeals the requirement that the States, in effect, exhaust all State child support locator resources before they may request the assistance of the Federal PLS. Effective upon enactment.
17. Extension of medicaid eligibility when support collection results in termination of AFDC eligibility (sec. 18).	When a family loses eligibility for AFDC as a result of child support collections, it also loses eligibility for medicaid.	If a family loses AFDC eligibility as the result (wholly or partly) of increased collection of support payments under the IV-D program, the State must continue to provide medicaid benefits for 4 calendar months beginning with the month of ineligibility. (The family must have received AFDC in at least three of the six months immediately preceding the month of ineligibility). Effective upon enactment.

### III. BACKGROUND INFORMATION ON THE CHILD SUPPORT ENFORCEMENT PROGRAM

#### BACKGROUND

The enactment of the Child Support Enforcement (CSE) program in 1975 represented a major new commitment on the part of the Congress to address the problem of nonsupport of children. Although prior to that time the Social Security Act had included provisions which were aimed at improving the collection of support on behalf of children with absent parents, these provisions had not proved to be effective. The 1975 amendments were aimed at strengthening in a very significant way the efforts of the Federal and State governments to improve the enforcement of child support obligations.

The 1975 legislation (P.L. 93-647) added a new part D to title IV of the Social Security Act. The statute authorizes Federal matching funds to be used for enforcing the support obligations owed by absent parents to their children and the spouse (or former spouse) with whom the children are living, locating absent parents, establishing paternity, and obtaining child and spousal support. Basic responsibility for child support and establishment of paternity is left to the States, but the Federal Government also plays a major role in funding, monitoring and evaluating State programs, providing technical assistance, and in certain instances, in undertaking to give direct assistance to the States in locating absent parents and obtaining support payments from them. The program requires the provision of child support enforcement service for both welfare and non-welfare families.

## THE FEDERAL ROLE

The IV-D law requires that the child support program be administered by a separate organizational unit under the control of a person designated by and reporting directly to the Secretary of Health and Human Services. Under the present organizational structure of the Department, the Commissioner of Social Security is the Director of the Office of Child Support Enforcement (OCSE).

The director of the Federal Office of Child Support Enforcement is given broad authority under the statute. He has the responsibility of establishing the standards for State programs which he determines to be necessary to assure that the programs will be effective. In addition, he is required to establish minimum organizational and staffing requirements for State child support agencies.

The director is also required to review and approve State plans, and to evaluate the implementation of State programs to determine whether they are in conformity with the Federal requirements. He must conduct annual audits of State programs to determine whether the actual operation of the program in each State conforms to the Federal requirements, and must impose a penalty if he finds noncompliance. The penalty for noncompliance is a reduction of 5 percent in the Federal matching that would otherwise be payable to the State under the Aid to Families with Dependent Children (AFDC) program.

The statute also requires the director of the OCSE to provide technical assistance to the States to help them establish effective systems for collecting child and spousal support and establishing paternity. In this connection, the office has established a National Child Support Enforcement Reference Center as a central location for the identification, collection, and dissemination of useful information from State and local programs. In addition, it has created a National Institute for Child Support Enforcement to provide training and technical assistance to persons working in the field of child support enforcement.

Under the child support enforcement program, States may have access to the Federal courts to enforce court orders for support. It is the responsibility of the director of the OCSE to receive applications from State for permission to use these courts. He must approve applications for use of the Federal district court if he finds that a State has not undertaken to enforce the court order of the originating State within a reasonable time, and that use of the Federal court is the only reasonable method of enforcing the court order.

Another tool available to the States is the Internal Revenue Service. The statute requires the Secretary of HHS, upon the request of a State, to certify to the Secretary of Treasury for collection by the Internal Revenue Service of amounts which represent delinquent child support payments. The Secretary may certify only the amounts delinquent under a court order, and only upon a showing by the State that it has made diligent and reasonable efforts to collect amounts due using its own collection mechanisms. States must reimburse the Federal Government for any costs involved in making the collections. Collections may be made on behalf of both AFDC and non-AFDC families.



This use of the IRS regular collection mechanism for child support was amplified in amendments enacted as part of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35) to allow, in addition, the collection of past-due support from Federal tax refunds. Under this new authority, upon receiving notice from a State child support agency that an individual owes past-due support which has been assigned to the State as a condition of AFDC eligibility, the Secretary of Treasury is required to withhold from any tax refunds due that individual an amount equal to any past-due support. The withheld amount is sent to the State agency, together with notice of the taxpayer's current address.

The statute also requires the Secretary to establish and operate a Federal Parent Locator Service to be used to find absent parents in order to enforce child support obligations. Upon request, the Secretary must provide to an authorized person the most recent address and place of employment of any absent parent if the information is contained in the records of the Department of Health and Human Services, or can be obtained from any other department or agency of the United States or of any State.

Another major responsibility of the Secretary is to approve applications by the States for Federal matching funds to be used to establish automatic data processing and information retrieval systems designed to assist in the administration of the State child support program. Upon approval, a State may receive 90 percent matching funds to plan, design, develop and install or enhance the system.

Finally, the Secretary has the responsibility of assisting States in establishing adequate reporting procedures, and in providing the Congress with an annual report on all activities undertaken as part of the child support program.

#### THE STATE ROLE

The child support statute leaves basic responsibility for child support enforcement and establishment of paternity to the States. Each State is required to designate a single and separate organizational unit of State government to administer the program. The 1967 child support legislation had required that the program be administered by the welfare agency. The 1975 Act deleted this requirement in order to give each State the opportunity to select the most effective administrative mechanism. In practice, most States have placed the child support agency within the social or human services umbrella agency which also administers the AFDC program. However, two states have placed the agency in the Department of Revenue. the programs may be administered either on the State or local level. Eight programs are locally administered. A few programs are State administered in some counties and locally administered in others.

The States are required to have State plans which set forth their functions and responsibilities. The plan must provide that the State will undertake to secure support for an AFDC child whose rights to support have been assigned to the State. (Assignment of rights to support is a condition of eligibility for AFDC benefits.) It must also provide for the establishment of paternity for AFDC chil-

dren. With respect to non-AFDC families, the State must make available, upon application filed with the State agency, the child support collection and paternity determination services which are provided under the plan for AFDC families. The State is allowed to charge non-AFDC families an application fee (which must be reasonable as determined under regulations by the Secretary), and may recover costs in excess of the fee. These costs may be collected from either the custodial parent or the absent parent, at State option.

Each State must also enter into cooperative arrangements with appropriate courts and law enforcement officials to assist the IV-D agency in administering the program. The agreements may include provision for reimbursing courts and law-enforcement officials for their assistance.

The law required the IV-D agency to establish a State Parent Locator Service to locate absent parents, using all sources of information available to the State, as well as the Federal Parent Locator Service. It must also maintain full records of collections and disbursements and have an adequate reporting system.

In order to facilitate the collection of support in interstate cases, the State must cooperate with other States in establishing paternity, locating absent parents, and in securing compliance with an order issued by another State.

The statute requires the State IV-D agency to use the IRS tax refund offset procedure for AFDC families, and also to determine periodically whether any individuals receiving unemployment compensation owe child support obligations. The State employment security agency is required to withhold unemployment benefits, and to pay to the child support agency any outstanding child support obligations established by an agreement with the individual or through legal processes. Both of these procedures were added to the law in the Omnibus Budget Reconciliation Act of 1981.

Finally, the statute requires each State to comply with any other requirements and standards that the Secretary determines to be necessary to the establishment of an effective child support program.

#### GARNISHMENT OF FEDERAL PAYMENTS

Title IV-D of the Social Security Act also includes a provision allowing garnishment of wages and other payments made by the Federal Government for enforcement of child support and alimony obligations. The statute provides that moneys (the entitlement to which is based upon remuneration for employment) payable by the United States to any individual are subject to legal process brought for the enforcement against such individual of his legal obligation to provide child support or make alimony payments. The law sets forth in detail the procedures which must be followed for service of legal process, and specifies that the term "based upon remuneration for employment" includes wages, periodic benefits for the payment of pensions retirement or retirement benefits), and other kinds of Federal payments.

## FINANCING

The Federal Government pays 70 percent of State and local administrative costs for services to both AFDC and non-AFDC families on an open-end entitlement basis. The matching rate was reduced from 75 percent to 70 percent by a provision in the Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248). Funding for services to non-AFDC families was originally enacted on a temporary basis, but was made permanent in Public Law 96-272, enacted in 1980.

In addition, 90 percent Federal matching is available on an open-end entitlement basis to States that elect to establish an automatic data processing and information retrieval system. The Secretary must approve the system as meeting specified criteria before matching rate was increased from 75 percent to 90 percent in Public Law 96-265.

Collections made on behalf of AFDC families are used to offset the cost to the Federal and State governments of welfare payments made to the family. The amounts retained by the government are distributed between the Federal and State governments according to the proportional matching share which each has under a State's AFDC program.

Finally, as an incentive to encourage State and local governments to participate in the program, the law provides for a payment equal to 12 percent of collections made on behalf of AFDC families. These incentive payments are deducted from the Federal share of collections. The amount of the incentive payment was reduced from 15 percent, effective October 1, 1983, by the Tax Equity and Fiscal Responsibility Act of 1982.

TABLE 1.—PROGRAM OPERATIONS, SUMMARY OF NATIONAL STATISTICS, FISCAL YEARS 1978-1982

(Numbers in thousands)

	1978	1979	1980	1981	1982	Percent change
Total child support collections.....	\$1,046,690	\$1,333,259	\$1,477,575	\$1,628,894	\$1,771,482	+69
Total AFDC collections.....	\$471,567	\$596,626	\$603,084	\$670,638	\$787,318	+67
Total non-AFDC collections.....	\$575,123	\$736,633	\$874,491	\$958,257	\$984,164	+71
Total administrative expenditures .....	\$312,339	\$359,860	\$449,513	\$512,531	\$592,368	+90
Federal incentive payment to States and localities .....	\$54,096	\$66,636	\$72,443	\$90,936	\$106,638	+97
Average number of ADFC cases in which a collection was made .....	458	463	503	548	562	+23
Average number of non-AFDC cases in which a collection was made.....	249	224	247	331	447	+80
Number of families removed from ADFC due to child support collections.....	19	25	40	46	32	+68
Number of parents located.....	454	574	642	696	782	+72
Number of paternities established.....	111	138	144	164	174	+57
Number of support obligations established.....	315	349	374	415	469	+49
Percent of AFDC assistance payments recovered through child support collections .....	( <sup>1</sup> )	5.8	5.5	5.7	6.8 (79-82)	+17



TABLE 1.—PROGRAM OPERATIONS, SUMMARY OF NATIONAL STATISTICS, FISCAL YEARS 1978–1982—Continued

(Numbers in thousands)

	1978	1979	1980	1981	1982	Percent change
Total child support collections per dollar of total administrative expenses.....	\$3.35	\$3.70	\$3.29	\$3.18	\$2.99	— 11

<sup>1</sup> Not available.

Source: Child Support Enforcement Annual Reports.

TABLE 2.—STATE STATISTICAL PROFILE OF FISCAL YEAR 1982

(Collection and expenditure data expressed in thousands of dollars)

State	AFDC collections	Non-AFDC collections	AFDC expenditures	Non-AFDC expenditures	AFDC child support caseload	Non-AFDC child support caseload
Alabama .....	\$8,060	\$160	\$7,020	\$128	82,444	895
Alaska .....	1,048	6,340	2,062	745	10,497	3,534
Arizona .....	1,250	9,171	2,306	354	9,178	14,664
Arkansas .....	3,032	2,521	3,501	1,254	46,691	4,675
California .....	136,394	110,630	83,996	24,971	657,207	320,924
Colorado .....	5,990	10,948	5,787	842	93,976	28,819
Connecticut .....	21,308	15,770	8,263	1,206	40,687	13,218
Delaware .....	1,958	5,426	1,275	851	10,287	8,747
District of Columbia .....	1,813	761	3,708	160	46,444	2,092
Florida .....	14,286	5,988	12,308	1,758	256,789	10,742
Georgia .....	8,107	1,393	6,877	207	119,448	64,165
Guam .....	165	95	216	18	1,660	1,460
Hawaii .....	3,345	4,879	1,649	83	20,972	6,086
Idaho .....	3,433	765	1,595	90	20,092	3,310
Illinois .....	17,015	4,585	15,135	1,593	278,792	24,187
Indiana .....	11,650	2,939	7,342	84	138,978	10,401
Iowa .....	18,114	8,696	5,255	846	55,826	9,486
Kansas .....	7,787	1,835	4,642	23	97,228	3,273
Kentucky .....	3,752	10,895	5,880	1,198	136,818	11,032
Louisiana .....	9,301	13,018	9,832	1,016	104,448	20,846
Maine .....	5,991	1,474	2,128	504	31,020	593
Maryland .....	16,317	39,513	11,284	2,857	136,115	43,235
Massachusetts .....	40,368	23,244	12,923	2,406	92,600	11,000
Michigan .....	101,339	139,099	29,640	6,571	399,520	92,893
Minnesota .....	23,125	14,709	11,667	2,943	67,136	16,774
Mississippi .....	2,396	295	2,280	152	14,960	1,310
Missouri .....	12,437	6,152	5,436	2,136	111,764	10,344
Montana .....	1,237	513	1,015	33	24,971	856
Nebraska .....	3,176	13,949	3,295	282	16,678	9,829
Nevada .....	1,510	3,202	2,136	518	16,620	6,199
New Hampshire .....	2,303	2,927	1,420	94	6,121	1,090
New Jersey .....	33,606	96,887	23,098	9,320	247,169	75,207
New Mexico .....	2,218	1,252	2,084	586	66,850	3,037
New York .....	54,632	97,171	56,223	14,249	586,925	115,862
North Carolina .....	12,795	9,472	9,752	1,465	113,308	15,673
North Dakota .....	1,763	549	1,064	146	14,831	603
Ohio .....	30,082	872	18,379	195	308,620	22,124
Oklahoma .....	2,607	1,289	5,284	867	50,331	7,171
Oregon .....	16,599	30,725	7,737	3,579	39,443	41,346
Pennsylvania .....	40,586	214,895	17,651	17,559	236,589	240,288
Puerto Rico .....	675	16,697	1,200	620	57,208	18,105
Rhode Island .....	3,869	1,512	1,897	76	16,723	5,466
South Carolina .....	4,712	1,441	2,260	181	71,435	1,055
South Dakota .....	1,432	690	993	162	14,894	748
Tennessee .....	5,901	11,591	4,330	1,260	91,036	37,506
Texas .....	6,869	6,973	15,184	1,461	90,597	91,654



TABLE 2.—STATE STATISTICAL PROFILE OF FISCAL YEAR 1982—Continued

(Collection and expenditure data expressed in thousands of dollars)

State	AFDC collections	Non-AFDC collections	AFDC expenditures	Non-AFDC expenditures	AFDC child support caseload	Non-AFDC child support caseload
Utah.....	10,065	1,883	5,186	309	29,224	1,519
Vermont.....	3,039	219	722	87	7,774	922
Virginia.....	10,398	1,832	7,299	385	1,830	1,255
Virgin Islands.....	179	479	175	109	134,467	3,230
Washington.....	22,160	14,467	8,726	4,278	48,594	21,175
West Virginia.....	2,488	149	2,880	81	35,114	5,937
Wisconsin.....	32,020	11,132	13,945	1,145	128,428	12,027
Wyoming.....	619	258	343	43	7,761	471

Source: Child Support Enforcement, 7th Annual Report to Congress for the Period Ending September 30, 1982.

## IV. EXPLANATION AND JUSTIFICATION OF PROVISIONS

*Statement of purpose: (Section 2 of the bill)*

The bill makes explicit in the statement of purpose that the program is intended to assure that all children in the United States for whom assistance is securing financial support from their parents is requested will receive such assistance regardless of their eligibility or ineligibility for benefits under the program of Aid to Families for Dependent Children (AFDC).

By adding this explicit statement, the Committee is emphasizing its intention that the Department of Health and Human Services and the states vigorously implement a requirement that has been in the law since 1975. as the Committee on Finance observed in its report on the original legislation, "the problem of nonsupport is broader than the AFDC rolls." For this reason, at the outset the Congress included as part of the child support law a requirement that States make available to any individual upon application the child support collection and paternity determination services established under the State child support program. It is clear from the legislative history that the child support program has always been aimed at serving children who are not receiving AFDC, as well as those who are.

Notwithstanding law and legislative history, some states have not enforced child support obligations as energetically for non-AFDC families as they have for AFDC families, and in a few states and localities services appear to be available only for families receiving AFDC benefits. In other areas, reduced levels of services are provided for non-AFDC families, sometimes after lengthy waiting periods, and AFDC and non-AFDC services are administered separately with non-AFDC staffing only a fraction of AFDC. Unfortunately, this attitude toward the program has led to analyses measuring the effectiveness of child support enforcement only in terms of AFDC savings due to collections on behalf of recipients or AFDC cases not opened because of support payments and measurement of the program's success solely in terms of welfare savings.

The committee believes that establishment and enforcement of support obligations on behalf of children receiving AFDC are essential objectives of the program. However, those services are also essential for other children who are not receiving now and who may

never receive AFDC benefits. The Committee recognizes the larger societal responsibility for making sure that all children receive financial support from both their parents to the fullest extent possible. We do not think that assistance under the program should be reserved only for children living at subsistence or poverty levels. The objectives behind the program are greater than merely recouping federal and state AFDC expenditures.

The situation in the nation currently and in the foreseeable future regarding the structure and financial status of families with children indicates that child support enforcement must be available to all children. According to the Census Bureau, women who received child support had a mean 1981 money income of \$11,750 of which \$2,100 consisted of child support, while those who had awards but did not receive child support had incomes of \$8,000. These incomes are substantially in excess of AFDC eligibility limits in most states. However, few would deny that raising children at these income levels is difficult or that children in these families ought to enjoy some financial support from their other parent.

Yet 1981 Census data indicate that 40 percent of such children do not have support orders, and of the 60 percent with orders, fewer than half receive full payments and more than one quarter receive nothing at all. Perhaps even more alarming, is the fact that these figures represent a slight decline in the percentage of families awarded and receiving support compared with a similar survey taken in 1978 and that for those who did receive child support, payments after adjustment for inflation averaged about 16 percent lower in 1981 than in 1978.

The Committee believes that with nearly two million children who are born out of wedlock or whose parents divorce each year, the nation cannot afford to ignore the financial responsibility of both parents to support their children. It has been estimated that half of the children born this year will live in a single-parent family before they reach age 18. The dimensions of the need for child support enforcement require an expanded nationwide effort on behalf of our children, both those who are receiving AFDC and those who are not.

#### *Required State procedures: (Section 3 of the bill)*

The bill requires States to have in effect by October 1, 1985 a number of laws or procedures which have been found to be effective in the establishment and enforcement of child support obligations in those states and localities which have used them.

The bill authorizes the Secretary of Health and Human Services, under certain circumstances, to exempt States from the bill's requirements that specific procedures be implemented (income withholding, improved procedures, State income tax refund offsets, liens against property, paternity statute of limitations, imposition of security or bond, providing information to consumer credit agencies, tracking and monitoring of payments by public agencies). These exemptions are to be granted for a specified period of time but may be renewed, subject to the secretary's continuing review, based on the presentation by the State to the Secretary of data pertaining to caseloads, processing times, administrative costs, average support collections and any other actual or estimated data which

the Secretary may specify which demonstrate that the enactment of a law or the use of a procedure otherwise required would not increase the effectiveness and efficiency of the State child support enforcement program.

For example, a State where State income tax refunds average less than \$20 might not find it cost effective to implement an offset procedure. A State where court backlogs are short and child support matters can be disposed of within two or three weeks might be exempted from further expediting its procedures for processing child support cases.

#### *A. Income withholding*

Income withholding has proven to be one of the most effective, efficient and low-cost techniques for bringing child support obligations into paying status and keeping them there. When past-due support obligations accumulate for several weeks, months or years, they become difficult and probably impossible for most obligors to pay off. Deducting current support obligations from paychecks keeps support payments current without any effort on the part of the obligor and insures that the support obligation will come before other expenditures.

Because withholding of support from income is such a low cost and effective collection technique, the Committee believes that its widespread usage will result in a substantially higher rate of compliance with support obligations. It will also permit the concentration of personnel and resources on difficult cases which require more complicated and labor-intensive responses.

Withholding usually brings about reliable, timely compliance with support obligations and helps to avoid lost, incomplete or delayed payments. This regularity of support payment permits the custodial parent to plan on using the payments as part of the overall budget for supporting the child rather than reducing the standard of living and using support payments for occasional or unusual expenses.

The bill provides that States must implement procedures to withhold from obligors' wages amounts necessary to comply with support orders. Under these procedures withholding must be initiated when arrearages accumulate to an amount equal to one month of support or at any earlier point the State may choose. The State procedures also must provide for implementing withholding when voluntarily requested by obligors prior to the imposition of mandatory withholding. A State, if it desired, could require automatic withholding of support beginning with the first payment, without waiting for arrearages to accumulate. States, however, must require withholding when one month's worth of payments have gone unpaid. This amount could accrue, for example, as a result of four consecutive unpaid weekly payments, four non-consecutive weekly payments, or a series of partial payments over a period of time.

The withholding procedure must provide that the amount of withheld wages will be the amount necessary to comply with the current support order. Where arrearages exist, additional sums will be withheld in addition to current support obligations so that such arrearages can be paid off according to schedules established by the State. The sum withheld will also include a fee to cover the em-



ployer's cost of effectuating the withholding, unless the fee is waived by the employer. However, amounts withheld shall not exceed the amounts permitted under the Consumer Credit Protection Act. This limitation is intended to protect an obligor from having so much withheld that insufficient funds are left for the support of himself or herself and any dependents, and to prevent withholding from taking so much of an obligor's paycheck that it makes no sense to continue working.

State procedures are to allow automatic initiation of withholding for children for whom the State is already seeking support, whether or not these children are receiving AFDC, without the necessity of any further applications for services under the Title IV-D program. Withholding for children for whom Title IV-D services are not being provided already will be initiated when an application for Title IV-D services is filed with the appropriate State agency. State procedures must provide that withholding will be implemented without the need for any amendment to the support order involved or any further action by the court or administrative tribunal which issued it. The Committee intends that States' procedures for withholding will provide prompt remedy when support orders have not been paid, without the necessity for obligees taking additional legal steps or having to incur substantial additional cost or time lost from work.

The bill provides that withholding will be administered in a manner which permits documentation that support has been paid and notification of appropriate officials or triggering of appropriate follow up when arrearages occur. The State can direct employers to forward support amounts directly to a designated public agency which will record the payment and forward the amount expeditiously to the obligee. Alternatively, the State can specify other procedures to document the payment of support. Such alternative procedures must be publicly accountable, assure prompt distribution of withheld funds and keep adequate records to document payments of support and track and monitor such payments. The Committee intends that alternative procedures, if used, provide the same degree of monitoring, tracking and public accountability as would be provided by a public agency so that clear records will be available as to the payment of support, notice will be provided when arrearages occur, and withheld amounts will be promptly disbursed.

The Committee believes that documentation of support payments is an essential part of an effective support enforcement system. An efficient system which triggers enforcement actions promptly when support becomes overdue can prevent arrearages from mounting up to sums which the obligor is unlikely to pay. An official record of support payments makes possible a quick determination of payment status when disputes arise between parents as to whether or not support has been paid. This serves to protect the interests of the children and both parents and reduces expenses and delays that would otherwise occur if disagreements over whether or not payments actually had been made had to be resolved by administrative or judicial tribunals. In addition to providing information to be used to trigger follow up when arrearages occur, such documentation would allow the State, if it chooses, to provide custodial par-



ents with notice of the status of support collections on their behalf. This information could, for example, enable a custodial parent to make an informed decision about the possibilities of going off of AFDC and obtaining regular child support.

Before the withholding of support can be implemented, the State must notify the obligor in advance of the proposed withholding and the procedures to be followed to contest the withholding. The bill provides that a proposal to withhold may be contested only on the grounds that withholding is not proper because of mistakes of fact. Such mistakes of fact would include, for example, errors in the amount of current support owed, errors in the amount of arrearage that had accrued, or mistaken identity of the alleged obligor. This provision is not intended to waive the withholding requirement if the obligor paid the past-due support after receiving notice that withholding was being implemented. The obligor could not contest the proposed withholding on other grounds such as the inappropriateness of the amount of support ordered to be paid, changed financial circumstances of the obligor, or lack of visitation. These issues are important, but nonpayment of support should not be used to obtain relief with regard to these problems. They should be pursued independently through separate legal actions. In order to prevent protracted disputes over the initiation of withholding, the bill provides that any challenges must be resolved within no more than 30 days after the provision of such notice, and a final decision as to whether or not withholding will occur must be made within that period.

The bill contains a number of provisions relating to employers' responsibilities. The State must provide the employer with proper notice that wages of an employee are to be withheld. This notice must be a separate and distinct document containing no information other than the amounts to be withheld from the employee's wages, the date on which withholding is to begin, the amount to be retained by the employer as a fee for effectuating the withholding, and such other information that may be necessary for the employer to comply with the withholding order. Divorce decrees and other legal documents which provide for child support are often lengthy and complex, and they frequently contain material relating to disposition of personal property, visitation and other matters which employees might not wish to share with their employers and which have no bearing on the withholding action. To protect both parents' privacy and to spare employers from having to read through dozens of pages in order to find the part of a decree or order pertinent to withholding, the bill provides that notification to employers of withholding be provided in a separate document. The Committee anticipates that notification could be a standardized "boiler plate" form with which both government personnel and employers would become familiar.

The bill directs States to simplify the withholding process for employers to the greatest extent possible, and specifically directs them to permit an employer to combine all withheld amounts into a single payment to the appropriate State agency which would include a listing of the amount attributable to each employee whose wages are withheld. The Committee intends that States follow withholding procedures for child support obligations that are simi-

lar to and no more burdensome for employers than withholding or garnishment procedures for other types of debts.

The State must provide that an employer must be held liable to the State for any amount which he or she fails to withhold from an employee's wages after receiving proper notice. This liability applies both to AFDC cases where the support is assigned to the State and non-AFDC cases where any collected support will be transmitted by the public agency, or through an alternative procedure, to the children. This provision is intended to make sure that employers comply with the withholding procedure and that funds which are withheld from employee's wages are forwarded to the public agency or other entity designated by the State in accordance with the withholding notice. However, when an individual no longer works for the employer or the individual's wages are too low to permit withholding of the full amount of child support because of limits imposed by the Consumer Credit Protection Act, the employer would of course not be liable.

The State must provide that any employer must be fined who discharges an employee, takes disciplinary action against an employee or refuses to hire an individual because of the existence of withholding for child support and the burdens it imposes upon the employer. This fine is to apply even if the withholding for child support is not the only withholding from an employee's paycheck.

The State must provide for the priority of support collection under the withholding procedure over any other legal process under State law against the same wages. This means that if an employee's wages are subject to several garnishments, which total more than the Consumer Credit Protection Act limits, the full amount of the child support obligation must be withheld first, before any other garnishments. The Committee believes that the payment of child support is such a fundamental obligation that it takes precedence over other economic burdens or liabilities that parents may incur.

Not all non-custodial parents are employed in positions where they are paid a salary. Therefore, under the bill, a State may extend its system of withholding to include withholding from forms of income other than wages. Withholding might be extended, for example, to commissions and bonuses, retirement benefits, pensions, workers compensation, dividends, royalties or trust accounts. The State may also impose bonds or other requirements on individuals whose income is from sources other than wages in order to assure that child support will be collected without regard to the type of income or nature of income-producing activities of the individual owing child support.

Interstate situations present one of the most difficult areas of child support enforcement. Whether the obligor resides across the country or just across the State line, interstate enforcement of child support obligations is far more complex than intrastate cases where the child support was ordered in the State where both parents still reside. The Uniform Reciprocal Enforcement of Support Act (URESA), the Revised Uniform Reciprocal Enforcement of Support Act (RUESA), or similar legislation has been adopted by all the States, but the effective use of these legal tools varies from State to State. To aid in the collection of support in interstate



cases, the bill specifically provides that each State must enter into such agreements as may be necessary with other States so that (1) the State will provide withholding on income earned within the State to satisfy orders issued in other States and (2) other States will withhold income earned in their States to satisfy applicable orders issued in the State. The intent of this provision is to assure, insofar as is possible, that child support withholding will occur regardless of the State in which a parent owing support resides.

The bill provides that the State must make provision for terminating the withholding of support. Termination would be appropriate when the whereabouts of the child and custodial parent have been unknown for a period of time and therefore it is impossible to forward withheld funds to them. Termination of withholding would also occur at the expiration of the child support order, such as when the child reached the age indicated in the support order or when the child was legally adopted.

The bill requires that all child support orders issued or modified in a state after October 1, 1985 must provide for withholding of wages. As explained above, the bill requires States to implement wage withholding as a remedy for nonpayment of child support when services are provided or sought through the Title IV-D program. However, it is not the Committee's intention that all child support disputes must be handled through the Title IV-D program or that withholding through the IV-D Agency be initiated only if it is specified in support orders. The provision that all future child support orders contain a provision for withholding of wages will permit obligees to pursue withholding for past-due child support through private legal processes if they do not choose to use the Title IV-D services.

### *B. Improved and expedited procedures*

The bill requires States to make all reasonable efforts to expedite and otherwise improve the establishment of, compliance with, and enforcement of child support obligations and any related obligations arising under or in connection with the support orders involved. These efforts to expedite and improve procedures could be implemented on a statewide basis or could be targeted on those localities where such procedures were most needed and would be most effective.

A number of problems relating to the establishment and enforcement of child support result from the necessity of resolving disputes through the courts where, traditionally, child support as well as other domestic relations matters have been decided. The growing volume of child support cases, when added to the increased use of courts in general to resolve disputes, has resulted in clogged dockets and lengthy delays in litigating child support cases. In an informal survey of State Title IV-D offices, backlogs of 3 months were routinely reported, and several States reported delays of 6 months, particularly in larger cities. Should a case need to be re-scheduled, as is frequently the case, the wait to be docketed must be repeated. Usually, in the meantime, no support order has been established. Other problems arise from the lack of coordination and communication among the various personnel and officials who prepare and decide child support matters. This often results in inap-

appropriate support amounts being established. Using the courts to determine child support obligations often exacerbates the adversarial nature of the proceeding with parents emerging as "victors" or "losers". Thus, the combination of long delays, poor case management and communication, and adversarial proceedings may create a climate which deters voluntary compliance with child support obligations.

This provision reflects the Committee's intent that States implement procedures that have the objectives of reducing the adversarial nature of support proceedings, achieving better understanding and communication between the custodial and noncustodial parents regarding the support obligation as well as visitation rights and responsibilities, and reaching child support decisions promptly. The Committee does not intend, however, that such procedures should limit the authority or jurisdiction of the States' courts.

Such procedures could include administrative or quasi-judicial procedures to expedite the establishment and enforcement of support obligations. The quasi-judicial process is a system in which the exercise of discretion of a judicial nature is made by judge surrogates who are outside the traditional court system but are serving as an extension or branch of the court. Pleadings are filed with clerks or other court personnel, such as referees or masters, who examine the evidence and make findings or recommendations regarding the child support obligation. Judges, however, must approve the orders. Administrative process is a statutory system granting authority to an executive agency to determine child support duties and to establish and enforce orders through an adjudicative process. It is conducted wholly outside the court system, and support order decisions are made by hearings officers or administrative law judges after pleadings and other evidence are filed with administrative or executive agencies for consideration and determination.

The quasi-judicial and administrative systems have several advantages over the court process in many areas. Child support obligations can be established more quickly and at lower cost because of the relatively lower salaries and operating costs. Decision-makers deal exclusively with child support and hence develop greater expertise than many court personnel who must deal with a wide range of legal matters. Finally, these procedures can be tailored to mesh with and complement existing legal and administrative arrangements within jurisdictions so inefficient systems can be bypassed or eliminated from the child support program.

Some jurisdictions have used various mediation techniques as a means of helping parents arrive at mutually agreeable decisions on financial support, visitation and other related obligations. Although agreement will not be achieved by every couple on every issue, to the extent that parents can reach shared understandings of the support obligation, of the visitation and custody of children and of other parental responsibilities, there will be fewer problems in achieving compliance with these obligations. While it is important that a child's right to financial support from a parent be enforced separately from other issues, it is nevertheless true that unless such important related issues as visitation rights, agree-



ments and obligations are also resolved, enforcement of financial support obligations will continue to be an uphill battle.

### *C. Offset of State income tax refunds*

The bill provides that each State will implement a procedure for reducing any refund of State income tax by the amount of past-due support owed by a taxpayer who is delinquent in the payment of child support. The State must apply this provision to AFDC cases and may extend it to all cases for which collection services are provided under the State's Title IV-D program. The State also may extend this provision to child obligations which are not being pursued through the Title IV-D program. The State also may extend this provision to child support obligations which are not being pursued through the Title IV-D program, but these costs would not be eligible for Federal matching or incentive funds. The withholdings of refunds must be used for interstate as well as intrastate cases. The obligator must get prior notice of the proposed reduction in the refund before it occurs and the procedures to be followed to consent it. These procedures must meet all due process requirements of the State. Amounts retained by the State from tax refunds will be distributed to the State if the past-due support is owed to the State on behalf of an AFDC family and to the family if it is a non-AFDC case. The obligator's home address, as indicated on the tax return, will also be furnished to the State Title IV-D agency as an aid in locating parents who have not met their child support obligations. In order that the offset of tax refunds will be cost effective, the Secretary of Health and Human Services may prescribe regulations specifying the minimum amount of a refund and the minimum amount of past-due support to which the offset must apply. States which do not impose State income taxes, of course, would not be subject to this requirement.

A number of States have already implemented offsets of State income tax refunds and have found this to be an efficient and cost effective technique. In fiscal 1982, nearly \$31 million in past due child support was obtained from tax refunds in 21 States, including seven States in which child support offsets totalled more than \$1 million.

### *D. Liens against property*

States are to establish procedures under which liens are imposed against real and personal property for amounts of past-due support owed by an absent parent who resides or owns property in the State. Liens are simple to execute and cost effective. Often the mere imposition of a lien motivates an obligor to pay past-due support in order to get clear title to the property in question without it becoming necessary for the State to exercise the lien. In other instances, a lien on property will result in eventual payment of past-due support when the property is transferred or sold. The Committee believes that the use of liens will complement the withholding provisions and will be particularly helpful in enforcing support payments from obligors with substantial assets or income but who are not salaried employees.

### *E. Paternity statute of limitation*

The bill provides that procedures under applicable State paternity laws must permit the establishment of an individual's paternity for any child at least until the child's eighteenth birthday. The Committee intends that any statute of limitations on establishing paternity apply equally to children receiving AFDC and children not receiving AFDC. States could eliminate statutes of limitation for establishing paternity altogether if they wished.

In many child support cases, the first step is to establish the child's paternity. Some 700,000 children are born out of wedlock each year in the United States—over 18 percent of all births. Many of these children eventually need assistance in obtaining support. The administrator of the New York City child support program testified before the Subcommittee on Public Assistance and unemployment Compensation that two-thirds of the New York City child support caseload involves children born out of wedlock. However, if a State's applicable statute of limitation does not permit establishment of paternity past the child's second, sixth or other birthday, it will be impossible ever to establish support orders on behalf of children past these ages and therefore impossible to obtain support for them. If the custodial mother's earnings are insufficient to support the children and paternity statutes prevent the father from being obligated to support them, the children will become AFDC recipients with no possibility for the State to recover the cost of their benefits.

Relatively short statutes of limitation were enacted in the past in order to prevent stale claims and to protect a man from having to defend himself against a paternity action brought years after the child's birth when witnesses may have disappeared and memories may have become faulty. Recent progress in developing highly specific tests for genetic markers now permits the exclusion of over 99 percent of those wrongly accused of paternity regardless of the age of the child. These advances in scientific paternity testing eliminate the rationale for placing arbitrary time limitations on the establishment of paternity for a child and therefore the obligation to support that child.

### *F. Posting security, bonds or guarantees*

States are required to have procedures that require, in appropriate cases, an individual to give security, post a bond or give some other guarantee to secure the payment of past-due child support, if the individual has demonstrated a pattern of past-due support. Before requiring such a security, bond or guarantee, the individual must receive notice of the proposed requirement and the procedures to be used to contest it. These procedures must meet all due process requirements of the State.

The Committee believes that this procedure will be a useful supplement to wage withholding. For example, withholding may be inappropriate or unworkable when the obligor is self-employed or realizes income only from buying and selling properties. However, the Committee realizes that there will be instances where imposing a security, bond or guarantee would be counterproductive because the cost of meeting the security might preclude payment of the

support obligation. Therefore the bill requires States to use this procedure only where appropriate to the objective of guaranteeing payment of support.

### *G. Consumer credit information*

The bill requires each State to make available to consumer credit bureau organizations, upon the request of such an organization, information regarding the amount of past-due child support owed by non-custodial parents residing in the State. States must apply such information when the child support arrearage equals or exceeds \$1000; they may make information available about smaller arrearages if they wish. Prior to releasing information about arrearages to consumer credit bureaus, the State must notify the obligor of the proposed action and procedures for contesting the proposed release of information; these procedures must meet all due process requirements of the State. The State may charge a fee to the credit agencies which request information; the fee is not to exceed the State's actual costs for duplicating, copying or transmitting the information.

The Committee believes that making information about arrearages available to consumer credit bureau organizations will be a useful technique in achieving compliance with child support obligations. Child support obligations generally cannot be discharged in bankruptcy and stand in front of virtually all other debts which an individual may incur. Therefore, creditors and credit reporting agencies have an interest in knowing about child support arrearages of individuals who are seeking further expansion of their credit. An obligor who owes substantial amounts of past-due support ought not to be judged a good credit risk and should be discouraged from incurring still more debts until the child support obligations are paid. After child support arrearages have been reported to credit agencies, payment of those arrearages will serve to clear the obligor's credit rating.

When payment of past due support has been sought, information regarding the arrearage is a matter of public record. Therefore, consumer credit agencies already have access to these records and can include this information on individuals' credit ratings. However, obtaining this information is often a laborious procedure that involves traveling to a courthouse or administrative office, searching through records and copying information by hand. State child support enforcement agencies, particularly those which are automated, can compile information regarding documented child support arrearages and supply it to consumer credit bureaus efficiently and inexpensively.

Information which shows that child support is being paid on a regular basis and that there are not child support arrearages will help custodial parents establish that child support is paid regularly and therefore can be counted toward available family income for purposes of evaluating their credit worthiness. Nothing in this bill should be construed to restrict other uses of credit bureaus which States wish to utilize.



#### *H. Tracking and monitoring of support payments by public agencies*

The bill provides that, at the request of either the custodial or the non-custodial parent, child support payments will be made through the State agency which administers the State's child support income withholding system or the alternative publicly accountable procedures established by the State. This request can be made and must be honored even though no arrearages in child support have occurred. The State must charge the parent making the request a fee equal to the actual costs, up to \$25 per year, incurred by the State for handling and processing child support payments under this voluntary participation.

The Committee believes that the documentation of child support payment status available through a central registry or monitoring system may be desired by some parents whose support obligations are current and therefore who are not subject to the mandatory withholding provisions contained in this bill. Such documentation protects obligors from erroneous accusations of nonpayment or late payment of support. Similarly, it spares custodial parents from having to establish through complicated or lengthy legal processes that an arrearage has occurred.

Because the voluntary use of the State's tracking and monitoring systems will involve situations where child support obligations are current, the Committee believes that the costs associated with such voluntary use should be borne by the party requesting the service rather than by taxpayers. It is anticipated that these costs will be minimal, approximating the charges imposed by credit card issuers or by banks for handling similar transactions.

#### *90-percent matching for automated systems: (Section 4 of the bill)*

Under present law, Federal funds are available to States on a 90-percent matching basis for establishment of automatic data processing and information retrieval systems which meet four detailed requirements specified under section 454 of the Social Security Act. Section 4 of the bill extends this authority by allowing a State that has complied with the four requirements to use these funds to facilitate the development and improvement of the income withholding and other procedures required under section 3, including, but not limited to, procedures that improve the monitoring of child support payments, the maintenance of accurate records regarding the payment of child support, and the provision of prompt notification to appropriate officials with respect to any arrearages in child support payments which may occur.

The bill also specifies that the existing program of 90 percent Federal funding of automatic data processing and information systems applies to the cost of computer and data processing hardware. It was the Committee's intent to include hardware costs under this program when it was added to Title IV-D by Public Law 96-265. The specific inclusion of language pertaining to hardware is intended to eliminate the confusion that has arisen on this point and to make clear that 90 percent matching funds are to cover hardware costs as well as other costs associated with implementing such a data processing and information system.

Section 4 is effective the first calendar quarter after enactment.



*Support enforcement for former AFDC recipients: (Section 5 of the bill)*

Under present law, a State may continue providing child support enforcement services for up to three months on behalf of families whose AFDC benefits have been terminated, and may continue services thereafter only at the request of the family. The bill amends this provision by requiring the State to continue providing child support services to former AFDC families. Such continuation of services must be accomplished by automatically transferring the AFDC case to non-AFDC status under the State Title IV-D program, without requiring reapplication by the family for services or the imposition of any application fees. The bill also provides that child support services will be provided on the same basis and under the same conditions as for other non-AFDC cases.

The Committee believes that a family which needed AFDC benefits because child support obligations were not being paid will generally benefit from the continuation of enforcement services and that such continuing enforcement will help to prevent the family from returning to the AFDC rolls, as may happen if enforcement lapses. Services provided for non-AFDC cases under existing law are supposed to be as effective and energetic as those extended to AFDC cases. The Committee believes that transferring a former AFDC case to non-AFDC status should not in any way diminish the effectiveness of the enforcement services provided. Such transfers in status are to be effectuated automatically by the agency administering the child support program and should not require any appearances by the obligee or any payment of fees.

Section 5 is effective October 1, 1985.

*Federal incentive payments to States: (Section 6 of the bill)*

The bill sets forth a system of incentive payments intended to encourage states to develop and improve efficient, cost-effective child support programs which balance services for AFDC and non-AFDC cases, both interstate and intrastate. The present system of incentive payments, equal to 12 percent of support collected on behalf of individuals receiving AFDC, is repealed, effective October 1, 1985, and replace with the new incentive system. (The 70 percent federal match for administrative expenses under present law is retained).

Under the new incentive system, the Secretary must pay to each State, on a quarterly basis, an incentive payment equal to at least 4 percent of the State's total amount of AFDC support collection for the year, plus at least 4 percent (unless this exceeds 125 percent of the State's AFDC incentive payment) of the State's total amount of non-AFDC support collection for the year. However, the incentive payment will be increased to 5 percent if AFDC collections or non-AFDC collections equal the total amount expended by the State (for both AFDC and non-AFDC support enforcement for the operation of its child support enforcement plan under section 454 of the Social Security Act. In addition, a further incentive payment of one-half of 1 percent of AFDC of non-AFDC collections will be paid for each full one-tenth by which the ratio of such collections exceeds combined AFDC and non-AFDC costs, as illustrated in the table below:

AFDC incentive payment		Non-AFDC incentive payment	
Ratio of AFDC collections <sup>1</sup> combined	Percent of collections	Ratio of non-AFDC collections <sup>1</sup>	Percent of collections <sup>2</sup>
1.0:1 .....	5.0	1.0:1 .....	5.0
1.1:1 .....	5.5	1.1:1 .....	5.5
1.2:1 .....	6.0	1.2:1 .....	6.0
1.3:1 .....	6.5	1.3:1 .....	6.5
1.4:1 .....	7.0	1.4:1 .....	7.0
1.5:1 .....	7.5	1.5:1 .....	7.5
1.6:1 .....	8.0	1.6:1 .....	8.0
1.7:1 .....	8.5	1.7:1 .....	8.5
1.8:1 .....	9.0	1.8:1 .....	9.0
1.9:1 .....	9.5	1.9:1 .....	9.5
2.0:1 .....	10.0	2.0:1 .....	10.0

<sup>1</sup> Combined AFDC and non-AFDC administrative costs.

<sup>2</sup> To be paid as incentive.

The child support and administrative expenses to be applied in calculating incentive payments are not to include fees charged to custodial or absent parents or deducted from support payments. Therefore, if \$10 were withheld from a \$100 child support collection as a fee to cover collection costs, \$90 in child support would be counted in computing the incentive payment. Similarly, the \$10 fee would not be counted as part of the administrative costs of operating the title IV-D program.

For purposes of calculating incentive payments, States are permitted to reduce the total amount counted as administrative costs for child support enforcement activities by the amount expended for laboratory costs incurred in determining paternity. The Committee recognizes that paternity determination is an integral and important part of the child support enforcement process and that it can be one of the most costly steps in the sequence of actions that eventually culminate in the payment of child support. When laboratory tests are necessary to determine paternity, these tests must be performed on the mother and child as well as on the alleged father. Such tests may cost \$1000 or more, depending on their complexity. In jurisdictions where a high percentage of child support cases involve paternity determinations, including these laboratory costs in the calculation of incentive payments might be a disincentive to the operation of a vigorous paternity determination effort. The provision permitting States to reduce their administrative costs by these laboratory costs is intended to reduce any such disincentive.

The amount paid to a State as an incentive for collection of non-AFDC support may not exceed 125 percent of the amount paid as an incentive for collection of AFDC support. The Committee included this provision in order to prevent child support enforcement activities which now occur through regular legal channels outside of the Title IV-D program from being subsumed under the IV-D program simply in order that States might qualify for increased incentive payments without increasing the level of services provided.

The Committee places a high priority on improving the interstate child support enforcement situation. Therefore, under the incentive payment system, both the initiating State and the responding State will be credited with any support collected in an inter-

state case. Under the current system, a State which incurs administrative costs in order to collect support for a non-AFDC case receives no incentive payment since incentives currently are paid only for AFDC collections. Similarly, a state which seeks child support from an absent parent residing in another state receives no incentive payment if that support is obtained because the responding state retains the 12 percent incentive. The "double-counting" of support obtained in interstate cases allowed in the bill is intended to encourage States to pursue interstate cases as energetically as they pursue intrastate cases, regardless of the residence of the child or the obligor.

The bill provides that the Secretary shall estimate, on the basis of the best information available, the amount of incentive payment for which each state will qualify in the upcoming year. Incentive payments will be made for each calendar quarter equal to one-fourth of the estimated incentive payment for the year. However, the incentive payments may be increased or reduced to the extent of any overpayments or underpayments which were made in prior quarters. This provision is intended to provide States with advance notice as to how much incentive payment they should expect for a year so that they can budget for their Title IV-D programs with some degree of certainty.

In many States, much of the actual work of child support enforcement is carried out and financed at the local level, through courts, district attorneys or other entities. The bill provides that to the extent that political subdivisions of State participate in the costs of support enforcement, such subdivisions shall be entitled to receive an appropriate share, as determined under regulations prescribed by the Secretary, of any incentive payments made to the State. The committee intends that the incentive payments will be passed through to localities in a manner that takes into account their effort and involvement in the States Title IV-D program and the relative effectiveness of their participation.

The new incentive system will become effective October 1, 1985. However, to provide for a transition between the current incentive system and the new system, the bill provides that for Fiscal Year 1986, States will be paid an incentive equal to the greater of the amount they qualify for under the new system or 80 percent of the amount that would have been payable under the 12 percent of current law.

*Special project grants for interstate enforcement (Section 7 of the bill)*

In order to encourage and promote the development and use of more effective methods of enforcing support obligations in interstate cases, the bill authorizes the Secretary of Health and Human Services to make project grants to States for developing, testing, implementing and demonstrating new or innovative methods of support establishment and collection in interstate cases. The Committee places a high priority on the improvement of interstate child support enforcement. It intends these project grants to test methods, techniques, systems or other efforts which show promise of making substantial improvement in interstate enforcement and could be readily used by other States. Such project grants might in-



clude, for example, multi-state efforts to solve mutual problems, demonstration projects to disseminate to interested states techniques which have proved useful, development of specialized staff to handle interstate cases, and the development of intra- and interstate tracking systems designed to expedite interstate cases. These grants are not intended to supplant ongoing efforts in interstate collection.

There is authorized to be appropriated \$15,000,000 annually, beginning with fiscal year 1985 for these project grants.

*Periodic review of effectiveness of State programs; modification penalty: (Section 8 of the bill)*

Title IV-D presently requires that an annual audit be made of State child support enforcement programs to determine their compliance with all statutory requirements and to determine whether the penalty provision should be applied. The penalty under present law for noncompliance with Title IV-D requirements is a 5 percent reduction in the State's AFDC matching funds. This penalty has never been applied, however, because of its severity in relation of the nature of non-compliance, particularly during the first years of the program's operation.

The bill requires that each State's program be reviewed not less frequently than every 3 years. The Committee believes that it is not cost effective to conduct annual audits of programs which have had consistently excellent records of performances. Administrative resources could be better used for more detailed and frequent scrutiny of programs which appear to be having difficulty in achieving full compliance or operating effective efforts to enforce both AFDC and non-AFDC child support obligations.

In place of the 5 percent penalty provision, the bill provides for a graduated penalty system with correction periods for programs found to be out of compliance with Title IV-D requirements. Under this system, if a State program is inconsistent with IV-D program requirements, the Secretary will prescribe a period for corrective action. If such corrective action is not taken by the end of such period, a reduction in AFDC matching up to 2 percent will be applied. However, if it were the second consecutive occasion following which there was a failure to take timely corrective action, a penalty of up to 3 percent could be applied, or, if it were the third or subsequent occasion, the penalty could be raised to 5 percent.

The Committee believes that the State child support enforcement programs have matured to the point where it is not unrealistic to expect adequate levels of compliance with program requirements. The Committee endorses a focus on program effectiveness rather than simple compliance with processes. The Federal government pays 70 percent of the States' child support enforcement administrative costs and ought to be getting its money's worth in terms of firm and effective establishment and enforcement of AFDC and non-AFDC support support obligation. It believes that this system of reviews and graduated penalties will effectively complement the incentive system provided in Section 6 as a means of making sure that the substantial Federal investment results in aggressive and effective child support enforcement programs in the states.

This section is effective beginning October 1, 1983.



*Extension of section 1115 demonstration authority to title IV-D:  
(Section 9 of the bill)*

Under Section 1115 of the Social Security Act, the Secretary may waive compliance with any of the requirements of Titles I, X, XIV, XVI, XIX, XX or IV-A in connection with an experimental, pilot or demonstration project which is judged likely to assist in promoting the objective of these Titles. This waiver provision under present law does not apply to Title IV-D, the child support program.

The bill extends Section 1115 demonstration authority to Title IV-D. It specifies, however, that any experimental, pilot or demonstration project undertaken in connection with Title IV-D must be designed to improve the financial well-being of children and may not permit modifications in the child support program which would have the effect of disadvantaging children in need of support and that such projects must not result in increased cost to the Federal government under the AFDC program.

The Committee believes that one of the merits of the Federal system is that individual states can develop independently their own unique means of solving problems and administering programs. The Committee can see no reason why section 1115 waiver authority, which permits States in carefully circumscribed instances to experiment with alternative methods to attain program objectives, ought not to be extended to the Title IV-D program.

This section becomes effective upon enactment.

*Child support enforcement for certain children in foster care: (Section 10 of the bill)*

The bill adds a new subsection to Section 457 of the Social Security Act which pertains to the collection of child support on behalf of children who are in foster care under Title IV-E of the Act. Child support collected for any such children will be retained by the State as reimbursement for foster care maintenance payments with appropriate reimbursement to the Federal government. The public agency may use the collection in excess of the foster care maintenance payments in the manner it determines will best serve the interests of the child, including setting such payments aside for the child's future needs or making all or a part of the payments available to the person responsible for meeting the child's day-to-day needs. Child support paid in excess of amounts ordered to meet the child's needs may be retained by the State to reimburse it and the Federal government for any past foster care maintenance payments or AFDC payments made with respect to the child.

The bill also provides that, where appropriate, all steps will be taken to secure an assignment to the State of any rights to support on behalf of each child receiving foster care maintenance payments under Title IV-E.

The Committee's bill does provide discretion to the State child welfare agency to determine when it is appropriate to secure an assignment of support on behalf of a child for whom the State is claiming federal matching funds under Title IV-E of the Social Security Act. While the Committee believes that there generally is an obligation for the parent to contribute to the support of the child in out-of-home placement, the determination of that responsibility

should be made within the context of the State's overall policy related to parental responsibility for children in out-of-home placement. It should also take into account that some children in foster care are moving toward placement in adoption. The Committee is concerned that in some States the Federal Office of Child Support Enforcement has insisted that there be an assignment of support rights and collection of support even when the case was in the final phases of termination of parental rights and the child was close to being adopted. In addition, in at least one State, the child welfare agency is not part of the agency that administers the AFDC or child support programs. The Committee intends that insofar as possible, cooperative agreements will be reached which will take into account the existing administrative structure.

This section becomes effective October 1, 1983 and shall apply to collections made on or after that date.

*Enforcement of spousal support: (Section 11 of the bill)*

Present law permits States to enforce spousal support obligations in instances where the support order combines both child support and spousal support in the same order so that specific amounts solely for child support are not set forth. Without such a provision, States would be unable to enforce support for children in cases where orders provided for such combined support.

The bill requires States to enforce spousal support in these instances, effective upon enactment.

*Modification in annual reporting requirements: (Section 12 of the bill)*

The Secretary of Health and Human Services currently is required to submit to Congress three months after the end of each fiscal year a report on all activities undertaken pursuant to Title IV-D. Section 452(a)(10) describes the type of data and information which must be included in these annual reports.

The bill modifies these reporting requirements by adding a number of additional types of data which the Committee believes are needed in order to assess the effectiveness and status of the Title IV-D program in achieving its purposes. These reporting requirements include information regarding AFDC and non-AFDC cases in which there are already support obligations or for which new or increased support obligations were established during the year for which the report is being made, the amount of those obligations, the number of such cases with collections during the year and the amount collected. Information must also be provided, regarding cases with support obligations as to the number of cases in which the full amount of the obligation was paid, 90 percent but less than the full amount of the obligation was paid, two-thirds but less than 90 percent of the obligation was paid, at least one-third but less than two-thirds of the obligation was paid, something but less than one-third of the obligation was paid and none of the obligation was paid.

In addition, the Secretary is to report data which will permit Congress to assess the status of interstate collections, including but not limited to the number of interstate cases initiated by each state for AFDC and non-AFDC cases, the number of such cases with obli-



gations and the amount of the obligations and the amount collected. Also, information must be provided on the number of interstate cases from each State to which every State was asked to respond, the number in which a response in fact was made, the actions taken in response to such requests to establish paternity, obtain obligations or collect support and the amount collected.

The Committee believes additional information is needed in order to provide an accurate assessment of how well the purposes of the child support program are being carried out. Most of the currently reported data is aggregated. While this permits us to learn, for example, the total amount collected for AFDC cases and non-AFDC cases, it does not tell us how many cases have had collections or how many have not, or how many have support obligations and how many do not. We cannot judge from the total collections figures the range of full compliance for some cases and minimal compliance for others or how many cases have had no collections at all. The number of AFDC child support cases far exceeds the number of families currently receiving AFDC benefits, but data is not available to indicate how many of those cases have support obligations or pertain to current AFDC recipients. Similarly, very little data exists with regard to the interstate situation. Current data is lacking on a state by state or even a national basis as to what percentage of all child support efforts involve interstate cases. The Committee believes that including information about the efforts and results of initiating and responding states in interstate cases in the annual reports will give us for the first time a picture of the scope of interstate child support enforcement and will permit identification of particular areas where enforcement difficulties occur. The Committee believes that the child support enforcement program ought to be evaluated on the basis of how effective it is in obtaining support for all children for whom it is being sought. The information requirements added by this section will help in making such evaluations.

Section 12 is effective October 1, 1986.

### *Study of child support award levels*

The Committee requests the Secretary of Health and Human Services to report on the findings of the Department's study entitled "Models for Assessing and Updating Child Support Award Levels," and the Departments' recommendations based on that study and other information regarding the adoption of objective standards for equitable child support guidelines. The report should include an analysis of the advantages and disadvantages of various guidelines, formulas and approaches which could be used in establishing child support amounts, including an evaluation of the impact of such guidelines, formulas and approaches on assuring children a standard of living no lower than that of the non-custodial parent. The report should also include an evaluation of methods whereby child support awards may be adjusted periodically to reflect changes in the cost of living, in the increased cost of supporting children as they grow older, and in the non-custodial parent's income, without placing an undue burden on either parent to initiate or obtain such adjustments.

Finally, The Committee recommends that the report include a full and complete summary of the opinions and recommendations of an advisory panel to be comprised of at least one person who is representative of parents entitled to receive child support on behalf of their children, at least one person who is representative of absent parents obligated to pay child support, and at least two people with professional expertise in child support issues in the fields of law and economics, at least one person who is a member of the judiciary, at least one person who is a member of a State legislature, and at least one person with expertise in the administration of child support enforcement programs.

The Committee believes that establishing appropriate levels of support is an important component of the overall child support enforcement system. Further discussion of this is found in the explanation of Section 14 which requires State commissions on child support.

*Publicizing availability of child support services: (Section 13 of the bill)*

The bill requires, under the State's IV-D plan, that the State regularly and frequently publicize, through public service announcements and other means, the availability of child support enforcement services. This publicity must mention whether application fees are charged and must include a telephone number or postal address at which further information may be obtained.

A number of State programs have already developed imaginative and effective public services television and radio announcements and print advertisements which inform the public that Title IV-D services exist and are available to those who need them. However, not all jurisdictions are doing this, and the Committee is concerned that in many localities and States, families in need of child support may be unaware that services exist which they can afford. Because the bill provides that after October 1, 1985, all support orders must include a provision for withholding of support from the obligor's income if support obligations are not met, it is important that custodial parents become aware that such withholding can be enforced after they file an application for Title IV-D services.

This provision is not intended to require Title IV-D agencies to conduct extensive or costly public relations or advertising campaigns. The provision does require, however, the use of public service announcements, inexpensive advertisements, posters and the like at frequent intervals in media to which custodial parents are likely to have access.

Section 13 is effective October 1, 1985.

*State commissions on child support: (Section 14 of the bill)*

The bill requires each State governor to appoint a child support commission to examine, investigate and study the operation of the State's child support system. These commissions are to determine the extent to which the State's child support system has been successful in securing financial support and parental involvement for AFDC and non-AFDC children.

Four issues the commissions should emphasize are specifically enumerated in the bill. Commissions may, of course, take up such



additional topics as may be appropriate to the programs of their particular States.

The issues surrounding visitation of children by their absent parents and the link between problems of visitation and problems of child support enforcement are particularly vexing. State commissions are to examine the nature and extent of these problems, the existing means for dealing with them and changes in laws or procedures which would prevent, reduce and resolve such problems in the future. The Committee is convinced that unless visitation rights and responsibilities are enforced, it will remain extremely difficult to enforce financial support obligations in cases where visitation is an issue.

The commissions must also examine the advisability of establishing a statewide schedule for setting the dollar amount of child support orders based on such objective standards as the State may choose. One of the major underlying support enforcement problems is the level of support ordered to be paid. Obligees frequently believe support orders are established at unrealistically low levels and are reduced too readily when support is unpaid. Obligor, on the other hand, frequently contend that support is ordered at unrealistically high and even punitive levels. Several studies have found that the economic position of non-custodial parents actually improves after divorce while that of the custodial parent and children declines substantially in terms of what their income could provide in relation to their needs even when child support is paid. When support obligations go unpaid, the difference in post-divorce standard of living is even more striking. Similarly, studies have found that the amounts of support obligation established by courts or administrative tribunals bear little relation to obligors' ability to pay and generally represent a lower percentage of obligors' income the higher that income is. In jurisdictions where there are no objective guides for establishing support obligations, amounts established in virtually identical cases may vary widely depending on a variety of factors including the particular judge setting the amount and the relative sophistication of legal advice that may be available to each spouse. The Committee believes that establishment of realistic support obligations would make a major difference in parent's willingness to pay support and that such realistic obligations can be obtained through the use of objective standards to guide all parties involved in the support decision—parent, attorneys, judges and administrative officers.

The State commissions are to analyze the effectiveness of current procedures and laws for obtaining support for children in the State from parents residing elsewhere and the State's response to requests for establishment and enforcement of support owed by its residents to children residing elsewhere. Finally, the commissions are to focus upon the need for additional State or Federal legislation which may be needed to obtain support for all children.

Each State's commission, which is to be appointed by the governor of the State is to be broadly representative of all aspects of the child support system. The Commissions shall include, for example, representation from both custodial and non-custodial parents, the agencies or organizational units administering the State's Title IV-D program, officers or officials of the State judicial system, execu-

tive and legislative branches who deal with child support matters, and child welfare and social services agencies plus any additional representation which may be appropriate such as, for example, attorneys whose practices includes establishment and enforcement of child support, members of the clergy and family counselors.

Commissions are to be appointed within 30 days after enactment of this Act and are to make a full and complete report of their findings and recommendations available to the public no later than October 1, 1985. The Governor of each State is to transmit the report of the State's commission to the Secretary of Health and Human Services along with his comments.

The bill specifically provides that in-state travel costs, and such other costs incurred by the commissioners or their members as the Secretary may allow in regulations, will be eligible for the Federal 70 percent match of States' Title IV-D administrative costs. This authority is intended to cover travel costs to the State capital or other meeting place in the State, and includes incidental costs such as copying, providing meeting rooms and the like. It is not intended to cover consultant fees or grants for studies.

Under certain circumstances, States will not be required to establish commissions. On the basis of information submitted or available to the Secretary, States which are judged to have implemented objective standards for determining child support obligations, which have had such commissions within the 5 year prior to the enactment of this Act, or which are making satisfactory progress toward fully effective child support enforcement and will continue to do so can be exempted, at their request, from the requirement to establish a child support commission.

*Wisconsin child support initiative: (Section 15 of the bill)*

The State of Wisconsin is planning to undertake a major experiment which involves both its child support enforcement and AFDC programs. The initiative is aimed at assuring an adequate system of collection and disbursement to reduce both the financial burden for custodial parents and State public assistance programs and the debilitating effects of the "Welfare stigma" on children. Wisconsin intends to test the following basic concepts in demonstration counties whose judges voluntarily cooperate:

- Automatic payroll withholding for all child support obligations;
- Determination of support obligations through a statutorily-mandated formula based upon non-custodial parent income and the number of children;
- Rapid response to delinquency;
- Creation of a uniform child support payment system for all children in single parent families; and
- A guaranteed minimum benefit for all children, with public subsidy of payments for those children whose parents lack sufficient income, after taking into account a custodial parent "surcharge" equal to one-half of support owed by the absent parent to assure that public funds do not subsidize children whose custodial parents have adequate income.

The proposals will be tested in phases, the first of which has already begun with payroll withholding for all new child support cases and an improved interstate collection system. The payment



formula is going to be piloted in selected counties. In January, 1984, computerized recordkeeping and delinquency response will begin in selected counties. A year later, minimum benefit and custodial parent "surcharges" will be begin. If these steps prove successful, statutory authority will be sought to implement the reform on all new support cases, making child support determination, collection and payment primarily an administrative process and greatly reducing the workload of the courts.

In order to conduct this initiative, a number of statutory requirements under both the Title IV-A (AFDC) and IV-D (child support enforcement) programs must be waived. The bill directs the Secretary of Health and Human Services to grant such waivers upon a determination, first, that the purpose of the waivers is (A) to provide the State with flexibility in the methods and procedures to be used to assist single-parent households in obtaining adequate child support (including the provision of such assistance where no application has been made for Title IV-D services), (B) to permit the State to limit the testing of the initiative to specified areas of the State, or to test alternatives in different sub-State areas, (C) to permit the State to establish payment methods or procedures designed to reinforce parental responsibility for the child, and (D) to permit the State to use Federal AFDC payments to ensure that there is an adequate level of support for children when non-custodial parents' contributions are inadequate (including cases where the family is ineligible for AFDC because of income or assets), and second, that the granting of the waivers will improve the financial well-being of children in the State and will not have the effect of disadvantaging children in need of support. Finally, section 15 provides that the total AFDC costs to the Federal government in connection with the Wisconsin initiative may not be higher than the costs which would be incurred by the Federal government during the same period under the regular AFDC program.

Section 15 is effective upon enactment October 1, 1983.

*Medical support: (Section 16 of the bill)*

The bill requires the Secretary of Health and Human Services to issue regulations requiring State Title IV-D agencies to seek medical support as part of any child support order whenever health care coverage for a child is available to the absent parent at a reasonable cost. These regulations are to also provide for improved information exchange between State child support enforcement agencies and the State agencies administering medicaid.

In many cases, non-custodial parents can have their children included in an employment-related health benefit or health insurance program at little or no additional cost to the parent. The purpose of this provision in the bill is to require States to seek such employment-based coverage for AFDC and non-AFDC children for whom it is also seeking financial support provided that the custodial parent does not have access to similar benefits. Such employment-related benefits include, in addition to health coverage provided by a parent's current employer, coverage provided in connection with a retirement, disability or unemployment plan, by a union plan, or by some other group plan which offers comprehensive benefits. It is not the Committee's intention that non-custodial

parents be required to purchase individual health coverage for their children.

The inclusion of AFDC children in their absent-parents' health coverage is expected to reduce Medicaid program costs by \$100 million in FY 1985 and more thereafter. Coverage of non-AFDC children in their absent-parents' health benefits will permit financial support to be used to meet children's other needs and in some cases, may result in better health care than the custodial parent could afford to provide.

*Parent locator service: (Section 17 of the bill)*

Under present law, States must first determine that an absent parent cannot be located through the procedures under the control of the Title IV-D agency before turning to the Federal parent locator service. This is not cost effective and may delay needlessly the location of a parent which must precede other child support enforcement procedures. The bill deletes this requirement so that States can access the Federal parent locator service without first having to exhaust all of its other resources for locating parents.

Section 17 is effective upon enactment.

*Four-month continuation of medicaid: (Section 18 of the bill)*

Under present law, when child support collections for an AFDC family raise family income over AFDC benefit levels, the family's AFDC benefits are terminated, and along with them, eligibility for Medicaid as well (unless the State covers the family under a program for the medically-needy). This occurs even if the child support collections exceed the AFDC benefit by minimal amounts.

In order to allow a transition period so that former-AFDC families can make alternative arrangements for meeting health needs, the bill extends medicaid eligibility for 4 months after the termination of AFDC benefits due to a change in child support levels. This provision applies to families which received AFDC in at least 3 of the 6 months immediately prior to the termination of AFDC benefits.

Section 18 is effective upon enactment.

The Committee received the following letter from the Committee on Energy and Commerce pertaining to this section.

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON ENERGY AND COMMERCE,  
*Washington, D.C., November 9, 1983.*

HON. DAN ROSTENKOWSKI,  
*Chairman, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: It is our understanding that your Committee has ordered reported H.R. 4325, the Child Support Enforcement Amendments of 1983, with an amendment related to collection of support payments which has an impact on Medicaid eligibility. Specifically, your Committee recommended a four-month extension of Medicaid eligibility for families who lose AFDC coverage resulting from the collection of support payments.

This provision, designed to provide a reasonable transition period before Medicaid coverage terminates, clearly increases the effec-



tiveness of the basic support collection provision. It is a reasonable adjunct to the provision included in the Ways and Means bill.

I have conferred with Chairman Waxman of the Subcommittee on Health and the Environment on this amendment. Although the provision impacts Medicaid, which is in the jurisdiction of the Committee on Energy and Commerce, we have no objection to its inclusion in the Ways and Means bill, nor will we request sequential referral of the legislation on the basis of this provision. This is done with the understanding that it does not compromise our jurisdiction over Title XIX or our right to be represented on Medicaid provisions in conference if substantial changes are made.

Sincerely,

JOHN D. DINGELL, *Chairman.*

## V. BUDGET EFFECTS OF THE BILL

### 1. COMMITTEE ESTIMATE

In compliance with clause 7(a) of Rule XIII of the Rules of the House of Representatives the following statement is made: the Committee agrees with the cost estimate prepared by the Congressional Budget Office which is included below. This estimate indicates federal budgetary savings of \$17 million, \$54 million and \$78 million for fiscal years 1984 to 1986 respectively. Child support collections as a result of the bill will be significantly greater than the federal budgetary savings particularly in fiscal year 1986 and beyond. The estimate for this legislation required many assumptions and the impact of the bill upon child support collections may be understated.

### 2. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES

With respect to clause 2(1)(3)(B) of Rule XI of the Rules of the House, the Committee advises that the required information pertaining to new budget authority or new or increased tax expenditures, to the extent applicable to this bill, is contained in the Congressional Budget Office cost estimate included below.

### 3. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 2(1)(3)(C) of rule XI, requiring a cost estimate prepared by the Congressional Budget Office, the following report prepared by the Congressional Budget Office is provided.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, D.C., November 10, 1983.*

HON. DAN ROSTENKOWSKI,  
*Chairman, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 4325, the Child Support Enforcement Amendments of 1983, as ordered reported by the House Ways and Means Committee on November 9, 1983.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

RUDOLPH G. PENNER, *Director.*

# CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill No.: H.R. 4325.
2. Bill title: Child Support Enforcement Amendments of 1983.
3. Bill status: As ordered reported by the House Ways and Means Committee on November 9, 1983.
4. Bill purpose: To amend part D of Title IV of the Social Security Act to reform the Child Support Enforcement program.
5. Estimated cost to the Federal Government: The estimated costs of this bill to the federal government are shown in table 1. These estimates assume an enactment date of November 30, 1983.

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF H.R. 4325

[By fiscal year, in millions of dollars]

Budget Function	1984	1985	1986	1987	1988
Direct spending: Function 550:					
Estimated budget authority <sup>1</sup> .....	-17	-84	-98	-107	-127
Estimated outlays .....	-17	-84	-98	-107	-127
Function 600:					
Estimated budget authority <sup>1</sup> .....		15	5	25	40
Estimated outlays .....		15	5	25	40
Authorizations: Function 600:					
Authorization change <sup>1</sup> .....		15	15	15	15
Estimated outlays .....		15	15	15	15
Total:					
Estimated budget authority/authorization change .....	-17	-54	-78	-67	-72
Estimated outlays .....	-17	-54	-78	-67	-72

<sup>1</sup> Funding that requires appropriations action.

Basis for estimate: This bill would reform the Child Support Enforcement (CSE) program in a variety of ways. Among these reforms, the most important with respect to budgetary effects would be a change in incentive payments to states, authorization of \$15 million annually for the funding of special projects on interstate cases, mandating states to utilize certain enforcement techniques, requiring the Department of Health and Human Services to issue regulations that would provide for the inclusion of medical support in child support orders, and provision of Medicaid for four months to families removed from AFDC as a result of increases in child support. Estimates of the budgetary effects of these reforms are based on incomplete information and there is a wide margin of uncertainty associated with them. There are no hard data or reliable analyses and research on which estimates can be based. Moreover, CSE programs vary considerably among states and localities so that national estimates are difficult, particularly since states and localities may react quite differently to legislative changes.

Table 2 shows CBO's federal outlay estimates for the major provisions of the bill with budgetary effects. A description of the methodology used for the estimates follows.

TABLE 2.—ESTIMATED OUTLAYS FROM THE MAJOR PROVISIONS IN H.R. 4325

(By fiscal year, in millions of dollars)

Provision	1984	1985	1986	1987	1988
Change in incentive payment .....			15	15	15
Authorization of funds for interstate projects .....		15	15	15	15
Mandating of State enforcement techniques .....			-40	-40	-45
Require regulation on medical support .....	-30	-100	-112	-125	-139
Provide medicaid for 4 months .....	13	21	24	28	32
Other .....		5	10	15	10
Impact on CSE case levels:					
CSE expenditures .....		10	30	55	90
Offsetting effects on public assistance .....		-5	-20	-30	-50
Total outlays .....	-17	-54	-78	-67	-72

*Change in incentive payment.*—The current federal incentive payment to states and localities to help finance the CSE program is equal to 12 percent of collections made on behalf of AFDC families. This bill would repeal this incentive payment on October 1, 1985 and would institute new incentives. The new incentives would be equal to 4 percent of AFDC collections and 4 percent of non-AFDC collections, each rising to 10 percent on a sliding scale depending on the ratio of collections to total administrative costs. The incentive paid on non-AFDC collections would be capped at 125 percent of the incentive paid on AFDC collections. In fiscal year 1986, the states would receive no less than 80 percent of what they would have received under current law.

CBO estimates that the new incentives would add \$15 million a year to outlays beginning in 1986. These estimates are based on state-by-state projections of CSE collections and costs consistent with total program collections and costs as estimated in CBO's baseline projections.

*Authorization of funds for interstate projects.*—The authorization of \$15 million annually for projects on interstate collection of child support would be effective beginning in fiscal year 1985. CBO assumes full appropriation of the authorized amounts. Moreover, the estimate of outlays assumes full spending of the authorized levels in each fiscal year.

*Mandating of State enforcement techniques.*—The bill would require states to adopt by October 1, 1985 several enforcement techniques that are currently optional with the states. CBO estimates that this provision would reduce outlays \$40 million a year in 1986 and 1987 and \$45 million in 1988.

The most important technique that would be mandated is wage withholding, which is the payment of support by an employer from the wages of the absent parent. The bill would require withholding when past due support equals one month's support payment. This would apply to approximately 35 percent of current collections for which wage withholding is not now utilized. There are no reliable analyses of the effect of wage withholding on child support collections or expenditures. The CBO estimate assumes that such collections would rise 10 percent as a result of wage withholding. Further, it is assumed that administrative costs would decline by 5 percent as a result of wage withholding because overdue support



with its attendant court and other costs would be reduced. Resulting reductions in federal outlays are estimated to be \$25 million a year in 1986 and 1987 and \$30 million in 1988.

Other mandated enforcement techniques include withholding from state income tax refunds of support to AFDC families that is past due, procedures for imposing liens against real and personal property for amounts of past-due support, imposition of guarantees or bonds to secure support from absent parents with a pattern of past-due support, and reporting of past-due support to credit agencies at their request. CBO estimates that outlays would be reduced by \$15 million a year in 1986, 1987, and 1988 as a result of these mandatory enforcement techniques, based on Administration estimates.

*Require regulation on medical support.*—The bill would require the Secretary of the Department of Health and Human Services to issue regulations that would require the state agencies administering the child support enforcement program to petition courts to include medical support as part of any child support order whenever health care coverage is available to the absent parent at reasonable cost. These savings are based on the Administration's estimate of about 600,000 eligible children. The average federal savings per child are estimated to be about \$175 in 1984. The savings are assumed to be phased in over the year in 1984 as cases are brought before the courts. As shown in Table 2, CBO estimates savings of \$30 million in 1984, rising to \$139 million in 1988.

*Provide medicaid for 4 months.*—The bill would provide Medicaid coverage for 4 months to families that are removed from AFDC because of increased child support. This provision is estimated to add \$13 million to outlays in 1984 and \$32 million by 1988.

These costs are based on an estimated 65,000 families in 1984 rising to 85,000 in 1988 who would be removed from AFDC as a result of child support. Estimated families are based on reported data for 1982. Further, it is estimated that 71 percent of these families would not qualify for the medically needy program in Medicaid, which is irrespective of receipt of AFDC. Medicaid costs per family for the four months are estimated to be \$380 in 1984, rising to \$520 in 1988.

*Other.*—Several provisions of the bill would be likely to result in added outlays by the states for automatic data processing (ADP) systems, which are subject to a federal match of 90 percent. The bill would permit the use of these funds for systems that would improve wage withholding and for the acquisition of computer hardware. CBO estimates that federal outlays would rise by \$5–15 million a year with the need for, and acquisition of, more ADP systems.

The bill has many other provisions that are not discussed here. They are estimated to have insignificant effects on outlays.

*Impact on CSE case levels.*—The intent of this bill is to improve the effectiveness of the CSE program with respect to increasing child support collections, particularly for non-AFDC families. A number of the provisions of the bill are likely to bring more non-AFDC families into the CSE program than would have occurred without this legislation. It is, of course, impossible to know how many such new families would come into the program. The CBO



estimate assumes that of the potential CSE families not expected to use the program under current law, 5 percent would come onto the program as a result of this bill in 1985 and 20 percent would come on by 1988. The resultant numbers of new CSE families total 100,000 in 1985 and 620,000 by 1988. The CSE cost of servicing each of these new families is estimated to be \$176 a year in 1985, rising to \$204 by 1988. Given the federal share of 70 percent, federal outlays are estimated to rise as a result of these new cases by about \$10 million in 1985 and \$90 million by 1988, as shown in Table 2.

These added outlays would be partially offset by reduced public assistance expenditures on these families as a result of increased child support collections. There are no reliable studies of the reduced public assistance costs that result from increases in child support collections for non-AFDC families. However, one recent study based on a few counties did report that 25 percent of non-AFDC cases received public assistance during the first year after their cases were opened and that on average per case \$500 less a year in public assistance was received where child support was paid. Based on these findings, the study estimated that public assistance savings (federal plus state) in fiscal year 1981 were about \$55 million. This represented 5.7 percent of non-AFDC collections and comparable savings to the federal government alone were 4.4 percent of collections. These estimated savings are too low, primarily because Medicaid was not included.

The CBO estimates consequently assume that reduced federal public assistance expenditures would equal 10 percent of the added collections for the new CSE families. Collections are assumed to rise by the same percentages as cases rise. The added collections are estimated to total \$75 million in 1985 and \$495 million in 1988. The federal shares of the reduced public assistance expenditures, as shown in Table 2, are then estimated to be about \$5 million in 1984 and \$50 million in 1988.

6. Estimated cost to State and local governments: Most of the bill's provisions that would affect federal outlays would also change State and local government expenditures. The table shows these changes by provision, and they are discussed, in turn, below.

TABLE 3.—ESTIMATED CHANGES IN STATE AND LOCAL EXPENDITURES

[By fiscal year, in millions of dollars]

Provisions	1984	1985	1986	1987	1988
Changes in incentive payment.....			-15	-15	-15
Authorization of funds for interstate projects.....		0	0	0	0
Mandating of State enforcement techniques.....			-55	-55	-60
Require regulation on medical support.....	-26	-85	-95	-106	-118
Provide medicaid for 4 months.....	11	18	20	24	27
Other.....		0	1	1	1
Impact on CSE Case Levels:					
CSE expenditures.....		5	15	25	40
Offsetting effects on public assistance.....		-5	-15	-20	-30
Total.....	-15	-67	-144	-146	-155

The altered incentives would provide states and localities with \$15 million in added funds annually beginning in 1986. This would equal the cost of the altered incentives to the federal government.

The authorization of funds for interstate projects should not alter significantly the states' budgetary situation because Congressional intent is that these funds should be used to augment and improve existing state efforts. However, there might be some substitution of these funds for current and planned state efforts in interstate collections.

Mandating of state enforcement techniques would increase child support collections on behalf of AFDC families, reducing their AFDC benefits dollar for dollar. The states' share of these reduced benefits is 46 percent and states would also receive incentive payments for the added collections. As a result, state expenditures would be reduced by \$55 million a year in 1986 and 1987 and by \$60 million in 1988.

The state's share of Medicaid outlays is 46 percent. Consequently, they would have reduced expenditures as a result of the mandated regulation on medical support. On the other hand, expenditures would rise as a result of the four-month extension of Medicaid to families removed from AFDC because of increased child support.

Other provisions of the bill would have little effect on state and local government expenditures. Increased expenditures of ADP systems would have little effect because the state's share is only 10 percent.

The estimated increase in new families coming onto the CSE program as a result of this bill would raise state and local expenditures by the states' 30 percent financing share. Partially offsetting these added expenditures would be reduced public assistance outlays, reflecting states' 46 percent share of AFDC and Medicaid.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Janice Peskin (226-2835), Hinda Ripps Chaikind (226-2820).

10. Estimate approved by: C. G. Nuckols (For James L. Blum, Assistant Director for Budget Analysis).

## VI. OTHERS MATTERS REQUIRED TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

### 1. VOTE OF THE COMMITTEE

In compliance with clause 2(1)(2)(B) of the rule XI, the following statement is made: the bill, H.R. 4325, as amended was ordered favorably reported to the House of Representatives by a voice vote.

### 2. OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of the rule XI, the Committee states that the provisions of this bill are consistent with its oversight findings, as discussed in the Explanation and Justification section of this report.

### 3. OVERSIGHT BY COMMITTEE ON GOVERNMENT OPERATIONS

With respect to clause 2(1)(3)(D) of rule XI, the committee advises that no oversight findings or recommendations have been submitted to the Committee by the Committee on Government Operations regarding the subject of this bill.

### 4. INFLATION IMPACT

In compliance with clause 2(1)(4) of the rule XI, the Committee states that the enactment of this bill is not expected to have any significant inflationary impact on prices and costs in the operation of the national economy.

### VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

#### SOCIAL SECURITY ACT

\* \* \* \* \*

#### TITLE IV—GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN AND FOR CHILD-WELFARE SERVICES

\* \* \* \* \*

#### PART A—AID TO FAMILIES WITH DEPENDENT CHILDREN

\* \* \* \* \*

#### STATE PLANS FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN

SEC. 402. (a) A State plan for aid and services to needy families with children must (1) \* \* \*

\* \* \* \* \*

(27) provide that the State has in effect a plan approved under part D and [operate a child support program in conformity with such plan], *operate a child support program in substantial compliance with such plan;*

\* \* \* \* \*

#### PAYMENT TO STATES

SEC. 403. (a) \* \* \*

\* \* \* \* \*

[(h) Notwithstanding any other provision of this Act, the amount payable to any State under this part for quarters in a fiscal year shall with respect to quarters beginning after December 31, 1976, be reduced by 5 per centum of such amount if such State



is found by the Secretary as the result of the annual audit to have failed to have an effective program meeting the requirements of section 402(a)(27) in any fiscal year beginning after September 30, 1976 (but, in the case of the fiscal year beginning October 1, 1976, only considering the second, third, and fourth quarters thereof).]

(h) *In any case where a State's program operated under part D is found by the Secretary as a result of a review conducted under section 452(a)(4) not to meet the requirements of such part, and where corrective action within such period or periods as the Secretary may by regulation prescribe has not been adequate to place the program (after such period or periods) in substantial compliance with all such requirements, the amount otherwise payable to such State under this part for any quarter beginning after September 30, 1983, and after the close of the applicable period for corrective action, shall be reduced by—*

*(1) not more than 2 per centum, or*

*(2) not more than 3 per centum, if the finding is the second consecutive such finding made as a result of such a review, or*

*(3) not more than 5 per centum, if the finding is the third or a subsequent consecutive such finding made as a result of such a review;*

*and such reduction shall continue until the first subsequent quarter throughout which the program is found to meet all such requirements.*

\* \* \* \* \*

#### DEFINITIONS

SEC. 406. When used in this part—

(a) \* \* \*

\* \* \* \* \*

*(h) Each dependent child, and each relative with whom such a child is living (including the spouse of such relative as described in subsection (b)), who becomes ineligible for aid to families with dependent children as a result (wholly or partly) or the collection or increased collection of child or spousal support under part D, and who had received such aid in at least three of the six months immediately preceding the month in which such ineligibility begins, shall be deemed to be a recipient of aid to families with dependent children for purposes of title XIX for an additional four calendar months beginning with the month in which such ineligibility begins.*

\* \* \* \* \*

### PART D—CHILD SUPPORT AND ESTABLISHMENT OF PATERNITY

#### APPROPRIATION

SEC. 451. For the purpose of enforcing the support obligations owed by absent parents to their children and the spouse (or former spouse) with whom such children are living, locating absent parents, establishing paternity, [and obtaining child and spousal support,] *obtaining child and spousal support, and assuring that as-*



*sistance in obtaining support will be available under this part to all children (whether or not eligible for aid under part A) for whom such assistance is requested, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part.*

#### DUTIES OF THE SECRETARY

SEC. 452. (a) The Secretary shall establish, within the Department of Health, Education, and Welfare a separate organizational unit, under the direction of a designee of the Secretary, who shall report directly to the Secretary and who shall—

(1) establish such standards for State programs for locating absent parents, establishing paternity, and obtaining child support and support for the spouse (or former spouse) with whom the absent parent's child is living as he determines to be necessary to assure that such programs will be effective;

(2) establish minimum organizational and staffing requirements for State units engaged in carrying out such programs under plans approved under this part;

(3) review and approve State plans for such programs;

[(4) evaluate the implementation of State programs established pursuant to such plan, conduct such audits of State programs established under the plan approved under this part as may be necessary to assure their conformity with the requirements of this part, and, not less often than annually, conduct a complete audit of the programs established under such plan in each State and determine for the purposes of the penalty provision of section 403(h) whether the actual operation of such programs in each State conforms to the requirements of this part;]

*(4) conduct a review of such State's program pursuant to such plan, no less frequently than once every three years, in order to determine whether such program substantially complies with the requirements of this part and to evaluate its effectiveness in carrying out the purpose of this part;*

(5) assist States in establishing adequate reporting procedures and maintain records of the operations of programs established pursuant to this part in each State;

(6) maintain records of all amounts collected and disbursed under programs established pursuant to the provisions of this part and of the costs incurred in collecting such amounts;

(7) provide technical assistance to the States to help them establish effective systems for collecting child and spousal support and establishing paternity;

(8) receive applications from States for permission to utilize the courts of the United States to enforce court orders for support against absent parents and, upon a finding that (A) another State has not undertaken to enforce the court order of the originating State against the absent parent within a reasonable time, and (B) that utilization of the Federal courts is the only reasonable method of enforcing such order, approve such applications;

(9) operate the Parent Locator Service established by section 453; and

(10) not later than three months after the end of each fiscal year, beginning with the year 1977, submit to the Congress a full and complete report on all activities undertaken pursuant to the provisions of this part, which report shall include, but not be limited to, the following:

(A) total program costs and collections set forth in sufficient detail to show the cost to the State and the Federal Government, the distribution of collections to families, State and local government units, and the Federal Government; and an identification of the financial impact of the provision of this part;

(B) costs and staff associated with the Office of Child Support Enforcement;

(C)(i) the number of child support cases (with separate identification of the number in which collection of spousal support was involved) in each State during each quarter of the fiscal year last ending before the report is submitted and during each quarter of the preceding fiscal year (including the transitional period beginning July 1, 1976, and ending September 30, 1976, in the case of the first report to which this subparagraph applies), and the disposition of such cases;

(ii) *the payment status of all active child support cases in each State at the time the report is submitted (with a separate description of those cases which are interstate in nature), as more particularly set forth in subsection (f);*

\* \* \* \* \*

*(f)(1) The information with respect to active child support cases in each State which is required by subparagraph (C)(i) of subsection (a)(10) to be contained in any report submitted under such subsection shall specifically include the following, separately stated for each of the 12 categories of cases specified in paragraph (2):*

(A)(i) *The total number of such child support cases (filed with the State agency of such State under this part) in which the full amount of the support obligation has been paid for all months in the particular fiscal year to which the report relates, with the amounts of the support obligations involved in those cases;*

(ii) *the total number of such cases in which at least 90 percent but less than the full amount of the support obligation has been so paid, with the amount of the support obligations established and support collections made in those cases;*

(iii) *the total number of such cases in which at least 66⅔ percent but less than 90 percent of the support obligations has been so paid, with the amounts of the support obligations established and support collections made in those cases;*

(iv) *the total number of such cases in which at least 33⅓ percent but less than 66⅔ percent of the support obligation has been so paid, with the amount of the support obligations established and support collections made in those cases;*

(v) the total number of such cases in which some but less than  $33\frac{1}{3}$  percent of the support obligation has been so paid, with the amount of the support obligations established and support collections made in those cases; and

(vi) the total number of such cases in which no part of the support obligation has been paid, with the amounts of the obligations involved in those cases; and

(B) the number of such child support cases (filed with the State agency of such State under this part), in each of the six subclasses described in clauses (i) through (vi) of subparagraph (A) within each of such categories, which were filed in such State on behalf of children residing in another State or against parents residing in another State in the particular fiscal year to which the report relates, specifying (for each such subclass)—

(i) the total number of such cases which were initiated in the State of filing, with the amounts of the support obligations established and support collections made in those cases,

(ii) the number of such cases which were initiated in another State (identifying each such State by name) and in which the State of filing was requested to take action to establish paternity, obtain support obligations, or collect support,

(iii) the number of the cases described in clause (ii) in which action was taken in response to the request, and

(iv) the actions (described in clause (ii)) which were so taken.

Such information shall also include any other matter which the Secretary may deem necessary for an effective assessment of the current status of interstate child support collections.

(2) The categories of child support cases (filed with the State agency of a State under this part) with respect to which information is to be provided in the report, under subparagraphs (A) and (B) of paragraph (1), shall include—

(A) four categories of cases in which the support rights involved are assigned to the State under section 402(a)(26) and in which the child is currently receiving aid to families with dependent children, as follows:

(i) all such cases in which a support obligation has been established,

(ii) all such cases in which a new or increased support obligation was so established during the particular fiscal year to which the report relates,

(iii) those cases described in clause (i) in which support was collected under this part during such fiscal year, and

(iv) those cases described in clause (ii) in which support was collected under this part during such fiscal year;

(B) four categories of cases in which the support rights involved are assigned to the State under section 402(a)(26) but in which the child is not currently receiving aid to families with dependent children, as follows:

(i) all such cases in which a support obligation has been established,



(ii) all such cases in which a new or increased support obligation was so established during the particular fiscal year to which the report relates,

(iii) those cases described in clause (i) in which support was collected under this part during such fiscal year, and

(iv) those cases described in clause (ii) in which support was collected under this part during such fiscal year, and

(C) four categories of cases to which neither subparagraph (A) nor subparagraph (B) applies, as follows:

(i) all such cases in which a support obligation has been established,

(ii) all such cases in which a new or increased support obligation was so established during the particular fiscal year to which the report relates,

(iii) those cases described in clause (i) in which support was collected under this part during such fiscal year, and

(iv) those cases described in clause (ii) in which support was collected under this part during such fiscal year.

#### PARENT LOCATOR SERVICE

#### SEC. 453. \* \* \*

\* \* \* \* \*

(f) The Secretary, in carrying out his duties and functions under this section, shall enter into arrangements with State agencies administering State plans approved under this part for such State agencies to accept from resident parents, legal guardians, or agents of a child described in subsection (c)(3) and [ ], after determining that the absent parent cannot be located through the procedures under the control of such State agencies, ] to transmit to the Secretary requests for information with regard to the whereabouts of absent parents and otherwise to cooperate with the Secretary in carrying out the purpose of this section.

#### STATE PLAN FOR CHILD AND SPOUSAL SUPPORT

#### SEC. 454. A State plan for child and spousal support must—

(1) provide that it shall be in effect in all political subdivisions of the State;

(2) provide for financial participation by the State;

(3) provide for the establishment or designation of a single and separate organizational unit, which meets such staffing and organizational requirements as the Secretary may by regulation prescribe, within the State to administer the plan;

(4) provide that such State will undertake—

(A) in the case of a child born out of wedlock with respect to whom an assignment under section 402(a)(26) of this title is effective, to establish the paternity of such child, unless the agency administering the plan of the State under part A of this title determines in accordance with the standards prescribed by the Secretary pursuant to section 402(a)(26)(B) that it is against the best interests of the child to do so, and



(B) in the case of any child with respect to whom such assignment is effective, *including an assignment with respect to a child on whose behalf a State agency is making foster care maintenance payments under part E*, to secure support for such child from his parent (or from any other person legally liable for such support) [and, at the option of the State], and from such parent for his spouse (or former spouse) receiving aid to families with dependent children (but only if a support obligation has been established with respect to such spouse), utilizing any reciprocal arrangements adopted with other State (unless the agency administering the plan of the State under part A or E of this title determines in accordance with the standards prescribed by the Secretary pursuant to section 402(a)(26)(B) that it is against the best interests of the child to do so), except that when such arrangements and other means have proven ineffective, the State may utilize the Federal courts to obtain or enforce court orders for support;

\* \* \* \* \*

(16) provide, at the option of the State, for the establishment, in accordance with an (initial and annually updated) advance automatic data processing planning document approved under section 452(d), of an automatic data processing and information retrieval system designed effectively and efficiently to assist management in the administration of the State plan, in the State and localities thereof, so as (A) to control, account for, and monitor (i) all the factors in the support enforcement collection and paternity determination process under such plan (including, but not limited to, (I) identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses and mailing addresses (including postal ZIP codes) of any individual with respect to whom support obligations are sought to be established or enforced and with respect to any person to whom such support obligations are owing) to assure sufficient compatibility among the systems of different jurisdictions to permit periodic screening to determine whether such individual is paying or is obligated to pay support in more than one jurisdiction, (II) checking of records of such individuals on a periodic basis with Federal, intra- and inter-State, and local agencies, (III) maintaining the data necessary to meet the Federal reporting requirements on a timely basis, and (IV) delinquency and enforcement activities), (ii) the collection and distribution of support payments (both intra- and inter-State), the determination, collection and distribution, of incentive payments both inter- and intra-State, and the maintenance of accounts receivable on all amounts owed, collected and distributed, and (iii) the costs of all services rendered, either directly or by interfacing with State financial management and expenditure information, (B) to provide interface with records of the State's aid to families with dependent children program in order to determine if a collection of a support payment causes a change affecting eligibility for or the amount of aid under such program (C) to provide for security against unauthorized

access to, or use of, the data in such system, [and (D)] *(D) to facilitate the development and improvement of the income withholding and other procedures required under section 466(a) through the monitoring of child support payments, the maintenance of accurate records regarding the payment of child support, and the provision of prompt notification to appropriate officials with respect to any arrearages in child support payments which may occur, and (E) to provide management information on all cases under the State plan from initial referral or application through collection and enforcement;*

(18) provide that the State has in effect procedures necessary to obtain payment of past-due support from overpayments made to the Secretary of the Treasury as set forth in section 464, and take all steps necessary to implement and utilize such procedures; [and]

(19) provide that the agency administering the plan—

(A) shall determine on a periodic basis, from information supplied pursuant to section 508 of the Unemployment Compensation Amendments of 1976, whether any individuals receiving compensation under the State's employment compensation law (including amounts payable pursuant to any agreement under any Federal unemployment compensation law) owe child support obligations which are being enforced by such agency, and

(B) shall enforce any such child support obligations which are owed by such an individual but are not being met—

(i) through an agreement with such individual to have specified amounts withheld from compensation otherwise payable to such individual and by submitting a copy of any such agreement to the State agency administering the unemployment compensation law, or

(ii) in the absence of such an agreement, by bringing legal process (as defined in section 462(e) of this Act) to require the withholding of amounts from such compensation [.] ;

(20) provide that (subject to section 466(d)) the State (A) will have in effect all of the laws required by section 466, and (B) will implement the procedures (designed to improve child support enforcement effectiveness) which are embodied or prescribed in such laws; and

(21) provide that the State will regularly and frequently publicize, through public service announcements and other means, the availability of child support enforcement services under the plan and otherwise, including information as to any application fees which may be imposed for such services and a telephone number or postal address at which further information may be obtained.

## PAYMENTS TO STATES

SEC. 455. (a) From the sums appropriated therefor, the Secretary shall pay to each State for each quarter, beginning with the quarter commencing July 1, 1975, an amount—

(1) equal to 70 percent of the total amounts expended by such State during such quarter for the operation of the plan approved under section 454,

(2) equal to 50 percent of the total amounts expended by such State during such quarter for the operation of the plan approved under section 454 except as is provided by a waiver by the Secretary which is granted pursuant to specific authority set forth in the law, and

(3) equal to 90 percent (rather than the percent specified in clause (1) or (2)) of so much of the sums expended during such quarter as are attributable to the planning, design, development, installation or enhancement of an automatic data processing and information retrieval system (*including the hardware components thereof*) which the Secretary finds meets the requirements specified in section 454(16), or meets such requirements without regard to clause (D) thereof;

\* \* \* \* \*

*(e)(1) In order to encourage and promote the development and use of more effective methods of enforcing support obligations under this part in cases where either the children on whose behalf the support is sought or their absent parents do not reside in the State where such cases are filed, the Secretary is authorized to make grants, in such amounts and on such terms and conditions as the Secretary determines to be appropriate, to States which propose to undertake new or innovative methods of support collection in such cases and which will use the proceeds of such grants to carry out special projects designed to demonstrate and test such methods.*

*(2) A grant under this subsection shall be made only upon a finding by the Secretary that the project involved is likely to be of significant assistance in carrying out the purpose of this subsection; and with respect to such project the Secretary may waive any of the requirements of this part which would otherwise be applicable, to such extent and for such period as the Secretary determines is necessary or desirable in order to enable the State to carry out the project.*

*(3) At the time of its application for a grant under this subsection the State shall submit to the Secretary a statement describing in reasonable detail the project for which the proceeds of the grant are to be used, and the State shall from time to time thereafter submit to the Secretary such reports with respect to the project as the secretary may specify.*

*(4) Amounts expended by a State in carrying out a special project assisted under this section shall be considered, for purposes of section 458(b) (as amended by section 6(a) of the Child Support Enforcement Amendments of 1983), to have been expended for the operation of the State's plan approved under section 454.*

*(5) There is authorized to be appropriated the sum of \$15,000,000 for each fiscal year beginning with the fiscal year 1985, to be used by the Secretary in making grants under this subsection.*



## SUPPORT OBLIGATIONS

SEC. 456. (a) The support rights assigned to the State under section 402(a)(26) *or secured on behalf of a child receiving foster care maintenance payments* shall constitute an obligation owed to such State by the individual responsible for providing such support. Such obligation shall be deemed for collection purposes to be collectible under all applicable State and local processes.

(1) The amount of such obligation shall be—

(A) the amount specified in a court order which covers the assigned support rights, or

(B) if there is no court order, an amount determined by the State in accordance with a formula approved by the Secretary, and

(2) Any amounts collected from an absent parent under the plan shall reduce, dollar for dollar, the amount of his obligation under paragraphs (1) (A) and (B).

(b) A debt which is a child support obligation assigned to a State [under section 402(a)(26)] (*under section 402(a)(26) or otherwise, in connection with the provision of services under this part*) is not released by a discharge in bankruptcy under title 11, United States Code.

## DISTRIBUTION OF PROCEEDS

SEC. 457. (a) \* \* \*

(b) The amounts collected as support by a State pursuant to a plan approved under this part during any fiscal year beginning after September 30, 1976, shall (subject to subsection (d)) be distributed as follows:

(1) such amounts as are collected periodically which represent monthly support payments shall be retained by the State to reimburse it for assistance payments to the family during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing);

(2) such amounts as are in excess of amounts retained by the State under paragraph (1) and are not in excess of the amount required to be paid during such period to the family by a court order shall be paid to the family; and

(3) such amounts as are in excess of amounts required to be distributed under paragraphs (1) and (2) shall be (A) retained by the State (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing) as reimbursement for any past assistance payments made to the family for which the State has not been reimbursed or (B) if no assistance payments have been made by the State which have not been repaid, such amounts shall be paid to the family.

(c) Whenever a family for whom support payments have been collected and distributed under the plan ceases to receive assistance under part A of this title, the State [may] *shall*—

(1) continue to collect amounts of support payments which represent monthly support payments from the absent parent for a period of not to exceed three months from the month following the month in which such family ceased to receive assist-



ance under part A of this title, and pay all amounts so collected, which represent monthly support payments, to the family; and

(2) at the end of such three-month period, if the State is authorized to do so by the individual on whose behalf the collection will be made, continue to collect amounts of support payments which represent monthly support payments from the absent parent and pay [the net amount of] any amount so collected, which represents monthly support payments, [to the family after deducting any costs incurred in making the collection from the amount of any recovery made,] *to the family (without requiring any formal reapplication and without the imposition of any application fee) on the same basis as in the case of other individuals who are not receiving assistance under part A of this title.*

and so much of any amounts of support so collected as are in excess of the payments required to be made in paragraph (1) shall be distributed in the manner provided by subsection (b)(3) (A) and (B) with respect to excess amounts described in subsection (b).

(d) *Notwithstanding the preceding provisions of this section, amounts collected by a State as child support for months in any period on behalf of a child for whom a public agency is making foster care maintenance payments under part E—*

*(1) shall be retained by the State to the extent necessary to reimburse it for the foster care maintenance payments made with respect to the child during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing);*

*(2) shall be paid to the public agency responsible for supervising the placement of the child to the extent that the amounts collected exceed the foster care maintenance payments made with respect to the child during such period but not the amounts required by a court or administrative order to be paid on behalf of the child during such period; and the responsible agency may use the payments in the manner it determines will serve the best interests of the child, including setting such payments aside for the child's future needs or making all or a part thereof available to the person responsible for meeting the child's day-to-day needs; and*

*(3) shall be retained by the State, if any portion of the amounts collected remains after making the payments required under paragraphs (1) and (2), to the extent that such portion is necessary to reimburse the State (with appropriate reimbursement to the Federal Government to the extent of its participation in the financing) for any past foster care maintenance payments (or payments of aid to families with dependent children) which were made with respect to the child (and with respect to which past collections have not previously been retained); and any balance shall be paid to the State agency responsible for supervising the child care placement, for use by such agency in accordance with paragraph (2).*

# [INCENTIVE PAYMENT TO STATES AND LOCALITIES

[Sec. 458. (a) When a political subdivision of a State makes, for the State of which it is a political subdivision, or one State makes, for another State, or a State on its own behalf makes, the enforcement and collection of the support rights assigned under section 402(a)(26) (either within or outside of such State), there shall be paid to such political subdivision, such other State, or such State (in the case of a State which on its own behalf makes such enforcement and collection) from amounts which would otherwise represent the Federal share of assistance to the family of the absent parent an amount equal to 12 percent of any amount collected and required to be distributed as provided in section 457 to reduce or repay assistance payments.

[(b) Where more than one jurisdiction is involved in such enforcement or collection, the amount of the incentive payment determined under subsection (a) shall be allocated among the jurisdictions in a manner to be prescribed by the Secretary.

[(c) No payment under the preceding provisions of this section shall be made to any State or political subdivision thereof with respect to any amount collected and distributed by it unless such amount was collected and distributed in accordance with the State plan of the State approved by the Secretary as meeting the conditions required by section 454.]

## INCENTIVE PAYMENTS TO STATES

*SEC. 458. (a) In order to encourage and reward State child support programs which perform in a cost-effective and efficient manner to secure support for all children who have sought assistance in securing support, whether such children reside within the State or elsewhere and whether they are eligible or ineligible for aid to families with dependent children under a State plan approved under part A of this title (and regardless of the economic circumstances of their parents), the Secretary (subject to section 6(b) of the Child Support Enforcement Amendments of 1983) shall pay to each State for each fiscal year, on a quarterly basis (as described in subsection (d)) beginning with the quarter commencing October 1, 1985, an incentive payment equal to—*

*(1) 4 percent of the total amount of support collected during the fiscal year in cases (filed with the State agency under this part) in which the support obligation involved is assigned to the State pursuant to section 402(a)(26) (with such total amount for any fiscal year being hereafter referred to in this section as the State's "AFDC collections" for that year), plus*

*(2) 4 percent of the total amount of support collected during the fiscal year in all other cases filed with the State agency under this part (with such total amount for any fiscal year being hereafter referred to in this section as the State's "non-AFDC collections" for that year);*

*except that (A) if subsection (b) applies with respect to a State's AFDC collections or non-AFDC collections for any fiscal year, the percent specified in paragraph (1) or (2) (with respect to such collections) shall be increased to the higher percent determined under such subsection (with respect to such collections) in determining the*

State's incentive payment under this subsection for that year, and (B) the dollar amount of the portion of the State's incentive payment for any fiscal year which is determined on the basis of its non-AFDC collections under paragraph (2) (with or without the application of subsection (b)) shall in no case exceed 125 percent of the dollar amount of the portion of such payment which is determined on the basis of its AFDC collections under paragraph (1) (with or without the application of such subsection).

(b) If the total amount of a State's AFDC collections or non-AFDC collections for any fiscal year bears a ratio to the total amount expended by the State in that year for the operation of its plan approved under section 454 (with the total amount so expended in any fiscal year being hereafter referred to in this section as the State's "combined AFDC/non-AFDC administrative costs" for that year) which is equal to or greater than 1, the percent specified in paragraph (1) or (2) of subsection (a) (with respect to such collections) shall be increased to—

(1) 5 percent, plus

(2) one-half of 1 percent for each full one-tenth by which such ratio exceeds 1;

except that the percent so specified shall in no event be increased (for either AFDC collections or non-AFDC collections) to more than 10 percent. For purposes of the preceding sentence, laboratory costs incurred in determining paternity in any fiscal year may at the option of the State be excluded from the State's combined AFDC/non-AFDC administrative costs for that year.

(c) In computing incentive payments under this section, support which is collected by one State on behalf of children residing in another State shall be treated as having been collected in full by each such State.

(d) The amounts of the incentive payments to be made to the various States under this section for any fiscal year shall be estimated by the Secretary at or before the beginning of such year on the basis of the best information available; and the Secretary shall make such payments for such year, on a quarterly basis (with each quarterly payment being made no later than the beginning of the quarter involved), in the amounts so estimated, reduced or increased to the extent of any overpayments or underpayments which the Secretary determines were made under this section to the States involved for prior periods and with respect to which adjustment has not already been made under this subsection. Upon the making of any estimate by the Secretary under the preceding sentence, any appropriations available for payments under this section shall be deemed obligated.

(e) If one or more political subdivisions of a State participate in the costs of enforcement and collection of support in cases filed with the State agency of such State during any period, such subdivision or subdivisions shall be entitled to receive an appropriate share (as determined under regulations prescribed by the Secretary) of any incentive payments made to the State under this section with respect to the period, and the State's right to receive such incentive payments shall be conditional upon its execution of an agreement satis-



*factory to the Secretary to pay such share to such subdivision or subdivisions.*

\* \* \* \* \*

**REQUIREMENT OF STATUTORILY PRESCRIBED PROCEDURES TO IMPROVE  
EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT**

*SEC. 466. (a) In order to be in compliance with the provisions of section 454(20)(A) at any time, each State must have enacted (and have in effect at that time) laws establishing, embodying, or requiring the use of the following procedures, consistent with regulations of the Secretary, to increase the effectiveness of the program it administers under this part:*

*(1) Procedures (more particularly set forth in subsection (b)) for the withholding from income of amounts payable as support.*

*(2) Procedures assuring (in accordance with regulations of the Secretary) that the State will make all reasonable efforts to expedite and otherwise improve the establishment of, compliance with, and enforcement of child support obligations and any related obligations arising under or in connection with the support orders involved.*

*(3) Procedures under which, at the request of the State child support enforcement agency, for the purpose of enforcing a support order of that or any other jurisdiction—*

*(A) any refund of State income tax which would otherwise be payable to an individual will be reduced, after notice to that individual of the proposed reduction and the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State), by the amount of any past-due support (as defined in section 464(c)) owed by such individual, in every case where the support obligation involved has been assigned to the State pursuant to section 40(a)(26), and in any other case at the option of the State; and*

*(B) the amount by which such refund is reduced will be retained by the State for distribution in accordance with section 457(b)(3), and notice of the individual's home address will be furnished to the State agency administering the plan approved under this part.*

*The Secretary may prescribe regulations specifying the minimum amount of a refund, and the minimum amount of past-due support, to which the procedures required by this paragraph may apply.*

*(4) Procedures under which liens are imposed against real and personal property for amounts of past-due support (as so defined) owed by an absent parent who resides or owns property in the State.*

*(5) Procedures which permit the establishment of an individual's paternity for any child at any time prior to such child's eighteenth birthday.*

*(6) Procedures which require in appropriate cases that an individual give security, post a bond, or give some other guarantee to secure payment of past-due support (as so defined) if such in-*



dividual is an absent parent who has a demonstrated pattern of overdue support payments, after notice to such individual of the proposed requirement and the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State).

(7) Procedures by which information regarding the amount of past-due support (as so defined) owed by an absent parent residing in the State will be made available to any consumer credit bureau organization (as defined in section 416 of Public Law 96-374) upon the request of such organization; except that (A) if the amount of the past-due support involved in any case is less than \$1,000, information regarding such amount shall be made available only at the option of the State, (B) any information with respect to an absent parent shall be made available under such procedures only after such parent has been notified of the proposed action and given a reasonable opportunity to contest the accuracy of such information (and after full compliance with all procedural due process requirements of the State), and (C) a fee for furnishing such information, in an amount not exceeding the actual cost thereof, may be imposed on the requesting organization by the State.

(8) Procedures under which child support payments under this part will be made through the State agency or other entity which administers the State's income withholding system (described in paragraph (1) and subsection (b)) in any case where either the absent parent or the custodial parent requests it, even though no arrearages in child support payments are involved and no income withholding procedures have been instituted; but in any such case an annual fee for handling and processing such payments, in an amount not exceeding the actual costs incurred by the State in connection therewith or \$25, whichever is less, shall be imposed on the requesting parent by the State.

(b) Under the procedures referred to in subsection (a)(1) (relating to the withholding from income of amounts payable as support)—

(1) in the case of each absent parent against whom a support order is or has been issued or modified in the State, so much of his or her wages must be withheld, in accordance with the succeeding provisions of this subsection, as is necessary to comply with the order and to provide for the payment of any fee to the employer which may be required under paragraph (6)(A) (except that the amounts withheld shall not exceed the amounts permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)), and the amounts to be withheld to satisfy arrearages may be appropriately limited by the State law);

(2) such withholding must be initiated without the necessity of any application therefor in the case of a child (whether or not eligible for aid under part A) with respect to whom services are already being provided under this part, and will be initiated upon the filing of an application for services under this part with the State agency in the case of any other child in whose behalf a support order has been issued or modified in the State; and in either case such withholding must occur without the need for any amendment to the support order involved or for any further action by the court or other entity which issued it;

(3) such withholding must be carried out in full compliance with all procedural due process requirements of the State and must begin as soon as is administratively feasible, in any event by the earliest of (A) the date on which such procedures become effective, the date on which such order becomes effective, the date on which the payments which the absent parent has failed to make under such order are at least equal to the support payable for one month, or (if the absent parent contests the withholding) the date specified in the notice given such parent under paragraph (5)(B), whichever of the four is latest, (B) the date as of which the absent parent requests that such withholding begin, or (C) such earlier date as the State may select;

(4) such withholding must be administered by a public agency designated by the State, and the amounts withheld must be expeditiously distributed by the State or such agency in accordance with section 457 under procedures (specified by the State) which provide for the keeping of adequate records to document payments of support and permit the tracking and monitoring of such payments, except that the State may establish or permit the establishment of alternative procedures for the collection and distribution of such amounts (under the administration of such public agency) otherwise than through such public agency so long as the entity making such collection and distribution is publicly accountable for its actions taken in carrying out such procedures, and so long as such procedures will assure prompt distribution, provide for the keeping of adequate records to document payments of support, and permit the tracking and monitoring of such payments;

(5) the State (A) must provide advance notice to each individual to whom paragraph (1) applies regarding the proposed withholding and the procedures the individual should follow if he or she desires to contest such withholding on the grounds that withholding (including the amount to be withheld) is not proper in the case involved because of mistakes of fact, and (B) if the individual contests such withholding on the grounds specified in clause (A), shall determine whether such withholding will actually occur, and (if so) shall notify the individual of the date on which such withholding is to begin, within no more than 30 days after the provision of such advance notice;

(6)(A)(i) the employer of any individual to whom paragraph (1) applies, upon being given notice as described in clause (ii), must be required to withhold from such individual's wages the amount specified by such notice (which shall include a fee, established by the State in accordance with criteria prescribed by the Secretary, to be paid to the employer unless waived by him or her) and pay such amount (after deducting and retaining any portion thereof which represents the fee so established) to the appropriate State agency (or other entity authorized to collect the amounts withheld under the alternative procedures described in paragraph (4)) for distribution in accordance with section 457; and

(ii) the notice given to the employer must be a separate and distinct document, containing no matter other than the amounts to be withheld from the employee's wages, the date on



*which the withholding is to begin, the amount to be retained by the employer as a fee for effectuating the withholding, and such other information as may be necessary for the employer to comply with the withholding order;*

*(B) methods must be established by the State to simplify the withholding process for employers to the greatest extent possible, including permitting any employer to combine all withheld amounts into a single payment to the appropriate State agency (with the portion thereof which is attributable to each individual employee being separately designated);*

*(C) the employer must be held liable to the State for any amount which such employer fails to withhold from wages due an employee when such amount is required under this subsection to be so withheld (up to the amount of the arrearage) following receipt by such employer of proper notice under subparagraph (A); and*

*(D) provision must be made for the imposition of a fine against any employer who discharges from employment, refuses to employ, or takes disciplinary action against any individual subject to wage withholding because of the existence of such withholding and the obligations or additional obligations which it imposes upon the employer;*

*(7) provisions must be made under State law for the priority of support collection under this subsection over any other legal process under State law against the same wages;*

*(8) the State may take such actions as may be necessary to extend its system of wage withholding under this subsection so that such system will include withholding from forms of income other than wages, or will include the imposition of bonding or other requirements in cases involving individuals whose income is from sources other than wages, in order to assure that child support owed by individuals in the State will be collected without regard to the types of such individuals' income or the nature of their income-producing activities;*

*(9) the State must make such arrangements and enter into such agreements with other States as may be necessary—*

*(A) to extend its withholding system under this subsection so that such system will include withholding from income derived within such State in cases where the applicable support orders were issued in other States; and*

*(B) to encourage the extension of the withholding systems of other States under this subsection so that such systems will include withholding from income derived in those States in cases where the applicable support orders were issued in such State,*

*in order to assure insofar as is possible that child support owed by individuals in such State or any other State will be collected without regard to the residence of the child for whom the support is payable or of such child's custodial parent; and*

*(10) provision must be made for terminating withholding.*

*In order to assure that income withholding as a means of collecting child support is available without the necessity of filing application for services under this part, the laws referred to in subsection (a) must require in the case of any State that all child support orders*

which are issued or modified in such State on or after the effective date of this section shall include provision for withholding from income whenever arrearages occur.

(c) As used in this section, the term "wages" means any and all cash remuneration for employment, determined without regard to any exclusions from or limitations on such term (or term "employment") which may be applicable under other provisions of this Act or under other Federal, State, or local laws.

(d) If a State demonstrates to the satisfaction of the Secretary, through the presentation to the Secretary of such data pertaining to caseloads, processing times, administrative costs, and average support collections, and such other actual data or estimates as the Secretary may specify, that the enactment of any law or the use of any procedure or procedures required by or pursuant to this section will not increase the effectiveness and efficiency of the State child support enforcement program, the Secretary may exempt the State for a specified period of time, subject to the Secretary's continuing review and to termination of the exemption should circumstances change, from the requirement to enact the law or use the procedure or procedures involved.

## PART E—FEDERAL PAYMENTS FOR FOSTER CARE AND ADOPTION ASSISTANCE

### STATE PLAN FOR FOSTER CARE AND ADOPTION ASSISTANCE

SEC. 471. (a) In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which—

(1) \* \* \*

\* \* \* \* \*

(15) effective October 1, 1983, provides that, in each case, reasonable efforts will be made (A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (B) to make it possible for the child to return to his home; [and]

(16) provides for the development of a case plan (as defined in section 475(1)) for each child receiving foster care maintenance payments under the State plan and provides for a case review system which meets the requirements described in section 475(5)(B) with respect to each such child [.] ; and

(17) provides that, where appropriate, all steps will be taken, including cooperative efforts with the State agencies administering the plans approved under parts A and D, to secure an assignment to the State of any rights to support on behalf of each child receiving foster care maintenance payments under this part.

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## TITLE XI—GENERAL PROVISIONS AND PROFESSIONAL STANDARDS REVIEW

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## PART A—GENERAL PROVISIONS

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## DEMONSTRATION PROJECTS

SEC. 1115. (a) In the case of any experimental, pilot, or demonstration project which, in the judgment of the Secretary is likely to assist in promoting the objectives of title I, VI, X, XIV, XVI, or XIX, or part A or (D) of title IV, in a State or States—

(1) the Secretary may waive compliance with any of the requirements of section 2, 402, 454, 602, 1002, 1402, 1602, or 1902, as the case may be, to the extent and for the period he finds necessary to enable such State or States to carry out such project, and

(2) costs of such project which would not otherwise be included as expenditures under section 3,403, 455, 603, 1003, 1403, 1603, or 1903, as the case may be, and which are not included as part of the costs of projects under section 1110, shall, to the extent and for the period prescribed by the Secretary, be regarded as expenditures under the State plan or plans approved under such title, or for administration of such State plan or plans, as may be appropriate.

In addition, not to exceed \$4,000,000 of the aggregate amount appropriated for payments to States under such titles for any fiscal year beginning after June 30, 1967, shall be available, under such terms and conditions as the Secretary may establish, for payments to States to cover so much of the cost of such projects as is not covered by payments under such titles and is not included as part of the cost of projects for purposes of section 1110.

\* \* \* \* \*

(c) *In the case of any experimental, pilot, or demonstration project undertaken under subsection (a) to assist in promoting the objectives of part D of title IV, the project—*

(1) *must be designed to improve the financial well-being of children, and may not permit modifications in the child support program which would have the effect of disadvantage children in need of support; and*

(2) *must not result in increased cost to the Federal Government under the program of aid to families with dependent children.*

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## CHILD SUPPORT ENFORCEMENT AMENDMENTS

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APRIL 9 (legislative day, MARCH 26), 1984.—Ordered to be printed

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Mr. DOLE, from the Committee on Finance,  
submitted the following

## REPORT

[To accompany H.R. 4325]

The Committee on Finance, to which was referred the bill (H.R. 4325) to amend part D of title IV of the Social Security Act to assure, through mandatory income withholding, incentive payments to States, and other improvements in the child support enforcement program, that all children in the United States who are in need of assistance in securing financial support from their parents will receive assistance regardless of their circumstances, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

## I. Summary

The bill (H.R. 4325), as amended by the Committee, strengthens the child support enforcement and paternity establishment program authorized by title IV-D of the Social Security Act by requiring the States to implement effective enforcement procedures, by providing incentives to the States to make available services to both Aid to Families with Dependent Children (AFDC) and non-AFDC families and to increase the effectiveness of their programs, and by otherwise improving Federal and State administration of the program.

*Purpose of the program.*—Language is added to the statement of purpose assuring that services will be made available to non-AFDC families as well as AFDC families.

*Federal matching of administrative costs.*—The Federal matching share is gradually reduced from 70 percent as follows: 69 percent in fiscal year 1987, 68 percent in fiscal year 1988, 67 percent in fiscal

year 1989, 66 percent in fiscal year 1990, and 65 percent in fiscal year 1991 and years thereafter.

*Federal incentive payments.*—The current incentive formula which gives States 12 percent of their AFDC collections (paid for out of the Federal share of the collections) is replaced with a new formula that is designed to encourage States to develop programs that emphasize collections on behalf of both AFDC and non-AFDC families, and to improve program cost effectiveness. The basic incentive payment will be equal to 6 percent of the State's AFDC collections, and 6 percent of its non-AFDC collections. States may qualify for higher incentive payments, up to a maximum of 10 percent of collections, if their AFDC or non-AFDC collections exceed combined administrative costs for both AFDC and non-AFDC components of the program. The total dollar amount of incentives paid for non-AFDC families may not exceed the amount of the State's incentive payment for AFDC collections. States may exclude the laboratory costs of determining paternity from combined administrative costs for purposes of computing incentive payments. States are required to pass through to local jurisdictions that participate in the cost of the program an appropriate share of the incentive payments, as determined by the State, taking into account program effectiveness and efficiency. Amounts collected in interstate cases will be credited, for purposes of computing the incentive payments, to both the initiating and responding States.

As part of the new funding formula, the Committee has included "hold harmless" protection for fiscal years 1986 and 1987 which assures the States that for those years they will receive the higher of the amount due them under the new incentive and Federal match provisions, or 80 percent of what they would have received under prior law.

The provision is effective beginning with fiscal year 1986.

*Matching for automated management systems used in income withholding and other procedures.*—The amendment specifies that the 90 percent Federal matching rate that is available to States that elect to establish an automatic data processing and information retrieval system may be used, at the option of the State, for the development and improvement of the income withholding and other procedures required in the bill through the monitoring of child support payments, the maintenance of accurate records regarding the payment of child support, and the provision of prompt notice to appropriate officials with respect to any arrearages that occur.

The amendment also specifies that the 90 percent matching is available to pay for the acquisition of computer hardware.

The provision is effective October 1, 1984.

*Improved child support enforcement through required State laws and procedures.*—States are required to enact laws establishing the following procedures with respect to their IV-D cases:

1. Mandatory wage withholding for all IV-D families (AFDC and non-AFDC) if support payments are delinquent in an amount equal to 1 month's support. States must also allow absent parents to request withholding at an earlier date.
2. Imposing liens against real and personal property for amounts of overdue support.



3. Withholding of State tax refunds payable to a parent of a child receiving IV-D services, if the parent is delinquent in support payments.

4. Making available information regarding the amount of overdue support owed by an absent parent, to any consumer credit bureau, upon request of such organization.

5. Requiring individuals who have demonstrated a pattern of delinquent payments to post a bond, or give some other guarantee to secure payment of overdue support.

6. Establishing expedited processes within the State judicial system for determining paternity and obtaining and enforcing child support orders. Decisions or recommendations resulting from the expedited process must be reviewed (i.e., ratified, modified, or remanded) by judges of the courts. Appellate review would be conducted by the regular court system at the request of either party.

7. Notifying each AFDC recipient at least once each year of the amount of child support collected on behalf of that recipient.

The Secretary may grant an exemption to a State or political subdivision from the required procedures, subject to later review, if the State can demonstrate that such procedures will not improve the efficiency and effectiveness of the State IV-D program.

The provision is effective October 1, 1984. However, if a State agency administering a plan approved under part D of title IV of the Social Security Act demonstrates to the satisfaction of the Secretary of the Department of Health and Human Services, that it cannot, by reason of State law, comply with requirements of a provision mentioned above, the Secretary may prescribe that the provision will become effective beginning with the fourth month beginning after the close of the first session of such State's legislature ending on or after October 1, 1984.

*Fees for services to non-AFDC families.*—States will be required to charge an application fee for non-AFDC cases not to exceed \$25. The amount of the maximum allowable fee may be adjusted periodically by the Secretary to reflect changes in administrative costs. The State may charge the fee against the custodial parent, or pay the fee out of State funds, or it may recover the fee from the absent parent.

In addition, a late payment fee must be charged to the noncustodial parents of AFDC and non-AFDC families on support that is overdue. The State may not take any action which would have the effect of reducing the amount of support paid to the child and will collect the fee only after the full amount of the overdue support has been paid to the child. The late payment fee provision is effective upon enactment.

*Periodic review of State programs; modification of penalty.*—The Director of the Federal Office of Child Support Enforcement is required to establish standards of performance and to conduct audits at least every three years to determine whether the standards and other requirements have been met. A more flexible penalty provision is provided, equal to at least 1 but no more than 2 percent for the first failure to comply substantially with the standards and requirements, at least 2 but no more than 3 percent for the second failure, and at least 3 but no more than 5 percent of the third and any subsequent consecutive failures. Annual audits would be re-

quired unless a State is in substantial compliance. If a State is not in substantial compliance, the penalty may be suspended only if the State is actively pursuing a corrective action plan which can be expected to bring the State into substantial compliance on a specific and reasonable timetable. A State which is not in full compliance would be determined to be in substantial compliance only if the Secretary determines that any noncompliance is of a technical nature which does not adversely affect the performance of the child support enforcement program.

The provision is effective beginning in fiscal year 1984.

*Special project grants to promote improvement in interstate enforcement.*—The Secretary is authorized to make demonstration grants to States which propose to undertake new or innovative methods of support collection in interstate cases. The authorization is \$5 million in 1985, \$10 million in 1986, and \$15 million in 1987 and years thereafter.

*Extension of sec. 1115 demonstration authority to the child support program.*—The sec. 1115 demonstration authority is expanded to include the child support enforcement program under specified conditions.

The provision is effective upon enactment.

*Modification in content of annual report by the Secretary.*—The present annual report information requirements are expanded to include data needed to evaluate State programs.

The provision is effective for reports issued for fiscal year 1986 and years thereafter.

*Child support enforcement for certain children in foster care.*—State child support agencies are required to undertake child support collections on behalf of children receiving foster care maintenance payments under title IV-E, if an assignment of rights to support to the State has been secured by the foster care agency. In addition, foster care agencies are required to take steps, where appropriate, to secure an assignment to the State of any rights to support on behalf of a child receiving foster care maintenance payments under the title IV-E foster care program.

The provision is effective upon enactment.

*Continuation of support enforcement for AFDC recipients whose benefits are being terminated.*—States must provide that families whose eligibility for AFDC is terminated due to the receipt of (or an increase in) child support payments will be automatically transferred from AFDC to non-AFDC status under the IV-D program, without requiring application for IV-D services.

The provision is effective October 1, 1984.

*Increased availability of Federal parent locator services to State agencies.*—The present law requirement that the States exhaust all State child support locator resources before they request the assistance of the Federal Parent Locator Service is repealed.

The provision is effective upon enactment.

*Availability of social security numbers for purposes of child support enforcement.*—The absent parent's social security number may be disclosed to child support agencies both through the Federal Parent Locator Service and by the IRS.

The provision is effective upon enactment.



*Limitation on discharge in bankruptcy of child support obligations.*—The Bankruptcy Act is amended to provide that obligations that have been assigned to the State on behalf of a non-AFDC child as part of the IV-D enforcement process may not be discharged in bankruptcy. (Current law prohibits discharge in bankruptcy for obligations assigned to the State on behalf of an AFDC child.)

The provision is effective upon enactment.

*Collection of overdue support from Federal tax refunds.*—Current law requires the Secretary of the Treasury, upon receiving notice from a State child support agency that an individual owes past due support which has been assigned to the State as a condition of AFDC eligibility, to withhold from any tax refunds due that individual an amount equal to any past due support. The Committee amendment extends this requirement to provide for withholding of refunds on behalf of non-AFDC families, under specified conditions.

The provision is effective for refunds payable after the year ending December 31, 1985.

*Guidelines for determining support obligations.*—Each State must develop guidelines to be considered in determining support obligations.

The provision is effective October 1, 1986.

*Wisconsin child support initiative.*—The Secretary of HHS is required to grant waivers to the State of Wisconsin to allow it to implement its proposed child support initiative in all or parts of the State as a replacement for the AFDC and child support programs. The State must meet specified conditions and give specific guarantees with respect to the financial well-being of the children involved.

*Sense of the Congress that State and local governments should focus on the problems of child custody, child support, and related domestic issues.*—The Committee amendment incorporates the language of S. Con. Res. 84 urging State and local governments to focus on the vital issues of child support, child custody, visitation rights, and other related domestic issues that are within the jurisdictions of such governments.

## II. General Description of the Child Support Enforcement Program

### BACKGROUND AND DEVELOPMENT

When the Committee on Finance reported amendments in 1974 to provide for the establishment of the child support enforcement program, it observed:

"The enforcement of child support obligations is not an area of jurisprudence about which this country can be proud."

Citing studies that had been done on the subject of nonsupport of children, the Committee commented:

"Thousands of unserved child support warrants pile up in many jurisdictions and often traffic cases have a higher priority. The blame for this situation is shared by judges, prosecutors and welfare officials alike, and is reinforced by certain myths which have grown up about deserting fathers."

The Committee's proposal to create a new child support enforcement program reflected a desire to improve in a very significant way the collection of support on behalf of children with absent parents. In presenting its rationale for the new program, the Committee stated:

"The Committee believes that all children have the right to receive support from their fathers. The Committee bill . . . is designed to help children attain this right, including the right to have their fathers identified so that support can be obtained. The immediate result will be a lower welfare cost to the taxpayer but, more importantly, as an effective support collection system is established fathers will be deterred from deserting their families to welfare and children will be spared the effects of family breakup."

In the years prior to enactment of the new child support program, the Committee had made continuing efforts to strengthen the law on behalf of children deprived of their parents' support because of desertion and illegitimacy.

As early as 1950 the Committee provided for prompt notice to law enforcement officials of the furnishing of Aid to Families with Dependent Children Program benefits with respect to a child who had been deserted or abandoned.

In 1967, the Committee instituted what it believed would be an effective program of enforcement of child support and determination of paternity. The 1967 amendments to the Social Security Act required the State welfare agencies to establish a single, identifiable unit with the responsibility of undertaking to establish the paternity of each child receiving welfare who was born out of wedlock and to secure support for him. If the child had been deserted by the parent, the welfare agency was required to secure support from the deserting parent, using any reciprocal arrangements adopted with other States to obtain or enforce court orders for support. The amendments also required the State welfare agencies to enter into cooperative arrangements with the courts and with law enforcement officials to carry out the program. In order to assist in locating absent parents, the law gave access to records of both the Social Security Administration and (if there was a court order) of the Internal Revenue Service.

Although it was hoped that the States would use the 1967 mandate to improve their programs in behalf of deserted children, there was in fact very little increased activity on the part of most States in the succeeding years. By 1972 the Committee had concluded that the law needed to be strengthened, and efforts began to enact new legislation that would require the States to improve their programs for establishing and collecting support. These efforts culminated in the enactment of the present child support enforcement program as title IV-D of the Social Security Act (P.L. 93-647).

The purpose of the current program is specifically stated in the law as "enforcing the support obligations owed by absent parents to their children and the spouse (or former spouse) with whom the children are living, locating absent parents, establishing paternity, and obtaining child and spousal support."

The structure of the program has not changed since its inception. Basic responsibility for child support and establishment of paternity



ty is left to the States, but the Federal Government also plays a major role in monitoring and evaluating State programs, providing technical assistance, and, in certain instances, in undertaking to give direct assistance to the States in locating absent parents and obtaining support payments from them. The program provides child support enforcement services for both welfare and non-welfare families.

## STRUCTURE AND OPERATION OF THE PROGRAM

### A. THE FEDERAL ROLE

One of the major concerns of the Committee when it designed the child support enforcement program was how to assure that the program would have sufficient visibility and stature to be able to operate effectively. The Committee bill thus required the Department of Health, Education, and Welfare (now Health and Human Services) to set up a separate organizational unit under the control of an Assistant Secretary for Child Support who would report directly to the Secretary. This provision was subsequently modified by conferees to omit the requirement that the unit be headed by an Assistant Secretary. However, the basic requirement of establishing a separate unit under the control of a person designated by and reporting directly to the Secretary was retained. Since the March 1977 reorganization of the Department, the Commissioner of Social Security has also served in the capacity of Director of the Office of Child Support Enforcement (OCSE).

The Director of the Office of Child Support Enforcement is given broad authority under the statute. He has the responsibility of establishing the standards for State programs which he determines to be necessary to assure that the programs will be effective. In addition, he is required to establish minimum organizational and staffing requirements for State child support agencies.

The Director is also required to review and approve State plans, and to evaluate the implementation of State programs to determine whether they are in conformity with the Federal requirements. He must conduct annual audits of State programs to determine whether the actual operation of the program in each State conforms to the Federal requirements, and must impose a penalty if he finds noncompliance. The penalty for noncompliance is a reduction of 5 percent in the Federal matching that would otherwise be payable to the State under the Aid to Families with Dependent Children (AFDC) program.

The statute also requires the Director of the OCSE to provide technical assistance to the States to help them establish effective systems for collecting child and spousal support and establishing paternity. In this connection, the office has established a National Child Support Enforcement Reference Center as a central location for the identification, collection, and dissemination of useful information from State and local programs. In addition, it has created a National Institute for Child Support Enforcement to provide training and technical assistance to persons working in the field of child support enforcement. Assistance and information under these proj-

ects and through OCSE are available to State legislators, judges, district attorneys, etc., as well.

Under the child support enforcement program, States may have access to the Federal courts to enforce court orders for support. It is the responsibility of the Director of the OCSE to receive applications from States for permission to use these courts. He must approve applications for use of the Federal district court if he finds that a State has not undertaken to enforce the court order of the originating State within a reasonable time, and that use of the Federal court is the only reasonable method of enforcing the court order.

Another tool available to the States is the Internal Revenue Service. The statute requires the Secretary of HHS, upon the request of a State, to certify to the Secretary of the Treasury for collection by the Internal Revenue Service of amounts which represent delinquent child support payments. The Secretary may certify only the amount delinquent under a court order, and only upon a showing by the State that it has made diligent and reasonable efforts to collect amounts due using its own collection mechanisms. States must reimburse the Federal Government for any costs involved in making the collections. Collections may be made on behalf of both AFDC and non-AFDC families.

This use of the IRS regular collection mechanism for child support was amplified in amendments enacted as part of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35) to allow, in addition, the collection of past-due support from Federal tax refunds. Under this new authority, upon receiving notice from a State child support agency that an individual owes past-due support which has been assigned to the State as a condition of AFDC eligibility, the Secretary of the Treasury is required to withhold from any tax refunds due that individual an amount equal to any past-due support. The withheld amount is sent to the State agency, together with notice of the taxpayer's current address.

The statute also requires the Secretary to establish and operate a Federal Parent Locator Service to be used to find absent parents in order to enforce child support obligations. Upon request, the Secretary must provide to an authorized person the most recent address and place of employment of any absent parent if the information is contained in the records of the Department of Health and Human Services, or can be obtained from any other department or agency of the United States or of any State.

Another major responsibility of the Secretary is to approve applications by the States for Federal matching funds to be used to establish automatic data processing and information retrieval systems designed to assist in the administration of the State child support program. Upon approval, a State may receive 90 percent matching funds to plan, design, develop and install or enhance the system.

Finally, the Secretary has the responsibility of assisting States in establishing adequate reporting procedures, and in providing the Congress with an annual report on all activities undertaken as part of the child support program.



## B. THE STATE ROLE

The child support statute leaves basic responsibility for child support enforcement and establishment of paternity to the States. Each State is required to designate a single and separate organizational unit of State government to administer the program. The 1967 child support legislation had required that the program be administered by the welfare agency. The 1975 Act deleted this requirement in order to give each State the opportunity to select the most effective administrative mechanism. In practice, most States have placed the child support agency within the social or human services umbrella agency which also administers the AFDC program. However, two States have placed the agency in the Department of Revenue. The programs may be administered either on the State or local level. Eight programs are locally administered. A few programs are State administered in some counties and locally administered in others.

The States are required to have State plans which set forth their functions and responsibilities. The plan must provide that the State will undertake to secure support for an AFDC child whose rights to support have been assigned to the State. (Assignment of rights to support is a condition of eligibility for AFDC benefits.) It must also provide for the establishment of paternity for AFDC children. With respect to non-AFDC families, the State must make available, upon application filed with the State agency, the child support collection and paternity determination services which are provided under the plan for AFDC families. The State is allowed to charge non-AFDC families an application fee (which must be reasonable as determined under regulations by the Secretary), and may recover costs in excess of the fee. These costs may be collected from either the custodial parent or the absent parent, at State option.

Each State must also attempt to enter into cooperative arrangements with appropriate courts and law enforcement officials to assist the IV-D agency in administering the program. The agreements may include provision for reimbursing courts and law enforcement officials for their assistance.

The law requires the IV-D agency to establish a State Parent Locator Service to locate absent parents, using all sources of information available to the State, as well as the Federal Parent Locator Service. It must also maintain full records of collections and disbursements and have an adequate reporting system.

In order to facilitate the collection of support in interstate cases, the State must cooperate with other States in establishing paternity, locating absent parents, and in securing compliance with an order issued by another State.

The statute requires the State IV-D agency to use the IRS tax refund offset procedure for AFDC families, and also to determine periodically whether any individuals receiving unemployment compensation owe child support obligations. The State employment security agency is required to withhold unemployment benefits, and to pay to the child support agency any outstanding child support obligations established by an agreement with the individual or

through legal processes. Both of these procedures were added to the law in the Omnibus Budget Reconciliation Act of 1981.

Finally, the statute requires each State to comply with any other requirements and standards that the Secretary determines to be necessary to the establishment of an effective child support program.

#### C. FEDERAL GARNISHMENT AND MILITARY ALLOTMENT PROVISIONS

Title IV-D of the Social Security Act also includes a provision allowing garnishment of wages and other payments made by the Federal Government for enforcement of child support and alimony obligations. The statute provides that moneys (the entitlement to which is based upon remuneration for employment) payable by the United States to any individual are subject to legal process brought for the enforcement against such individual of his legal obligation to provide child support or make alimony payments. The law sets forth in detail the procedures which must be followed for service of legal process, and specifies that the term "based upon remuneration for employment" includes wages, periodic benefits for the payment of pensions, retirement or retired pay (including social security and other retirement benefits), and other kinds of Federal payments.

As amended by Public Law 97-248, the law presently requires allotments from the pay and allowances of any member of the uniformed service (on active duty) when he fails to make child (or child and spousal) support payments. The requirement arises when the servicemember fails to make support payments in an amount at least equal to the value of 2 months' worth of support. Provisions of the Consumer Credit Protection Act apply so that the percentage of the member's pay which is subject to allotment is limited. The amount of the allotment is the amount of the support payment, as established under a legally enforceable administrative or judicial order.

#### FINANCING

The Federal Government pays 70 percent of State and local administrative costs for services to both AFDC and non-AFDC families on an open-end entitlement basis. Funding for services to non-AFDC families was originally enacted on a temporary basis, but was made permanent in Public Law 96-272, enacted in 1980.

In addition, 90 percent Federal matching is available on an open-end entitlement basis to States that elect to establish an automatic data processing and information retrieval system. The Secretary must approve the system as meeting specified criteria before matching may be paid to the State.

Collections made on behalf of AFDC families are used to offset the cost to the Federal and State governments of welfare payments made to the family. The amounts retained by the government are distributed between the Federal and State governments according to the proportional matching share which each has under a State's AFDC program.

Finally, as an incentive to encourage State and local governments to participate in the program, the law provides for a pay-



ment equal to 12 percent of collections made on behalf of AFDC families. These incentive payments are deducted from the Federal share of collections and are to be retained by the level of government making the collection.

### PROGRAM ACHIEVEMENTS

The child support enforcement program has grown significantly since its implementation in August 1975. From fiscal year 1976 through fiscal year 1983, more than \$10.8 billion in child support payments had been collected, \$4.7 billion on behalf of families receiving AFDC and \$6.1 billion on behalf of non-AFDC families. The total amounts collected each year have increased from \$511.7 million in fiscal year 1976 to more than \$2.0 billion in fiscal year 1983, nearly four times the amount collected in fiscal year 1976.

Under the child support enforcement program, support payments made on behalf of AFDC children are paid to the State for distribution rather than directly to the family. If the child support collection is insufficient to make the family ineligible for AFDC, the family receives its full AFDC grant and the child support is distributed to reimburse the State and Federal Governments in proportion to their assistance to the family. In fiscal year 1983, \$880 million in child support was collected on behalf of families receiving AFDC. The State share of the child support collected amounted to \$396 million. This sum together with incentive payments from the Federal Government totaling \$121 million, provided State and local governments with \$313 million in revenue. (The State share of administrative expenditures amounted to \$204 million [ $\$396 + \$121 - \$204 = \$313$ ].)

In fiscal year 1983, 800,000 parents were located, more than a four-fold increase over the 181,500 parents located in fiscal year 1976. In fiscal year 1976 paternity was established in 15,000 cases as compared to the approximately 209,000 paternities established in fiscal year 1983. During that same period, the number of support orders established increased from 24,000 to 495,000.

Nationally, the child support enforcement program recovered 6.8 percent of the \$12 billion paid to AFDC recipients in 1982. During the period fiscal year 1979 through fiscal year 1982, States generally increased the percentage of AFDC payments recovered.

Over the years, increasing numbers of both AFDC and non-AFDC families have had collections made on their behalf. In 1978 the average number of AFDC cases in which a collection was made was 458,000. This increased to 594,000 in 1983, a 30 percent increase. Over this same period the average number of non-AFDC cases in which a collection was made increased from 249,000 to 502,000, an increase of 102 percent.

The following tables present data showing the development of the child support program in the last six years, both nationally and State-by-State.

TABLE 1.—PROGRAM OPERATIONS, SUMMARY OF NATIONAL STATISTICS, FISCAL YEARS 1978-1983

[Numbers in thousands]

	1978	1979	1980	1981	1982	1983	Percent change
Total child support collections .....	\$1,046,690	\$1,333,259	\$1,477,575	\$1,628,894	\$1,771,482	\$2,023,416	+93
Total AFDC collections .....	\$471,567	\$596,626	\$603,084	\$670,638	\$787,318	\$880,288	+87
Total non-AFDC collections .....	\$575,123	\$736,633	\$874,491	\$958,257	\$984,164	\$1,143,148	+99
Total administrative expenditures .....	\$312,339	\$359,860	\$449,513	\$512,531	\$592,368	\$690,902	+121
Federal incentive payments to States and localities .....	\$54,096	\$66,636	\$72,443	\$90,936	\$106,638	\$120,718	+123
Average number of AFDC cases in which a collection was made .....	458	463	503	548	562	594	+30
Average number of non-AFDC cases in which a collection was made .....	249	224	247	331	447	502	+102
Number of families removed from AFDC due to child support collections .....	19	25	40	46	32	( <sup>1</sup> )	.....
Number of parents located .....	454	574	642	696	782	830	+83
Number of paternities established .....	111	138	144	164	174	209	+88
Number of support obligations established .....	315	349	374	415	469	495	+57
Percent of AFDC assistance payments recovered through child support collections .....	( <sup>1</sup> )	5.8	5.5	5.7	6.8	( <sup>1</sup> )	.....
Total child support collections per dollar of total administrative expenses .....	\$3.35	\$3.70	\$3.29	\$3.18	\$2.99	\$2.93	-13

<sup>1</sup> Not available.

Source: Office of Child Support Enforcement; data revised as of March 28, 1984.

TABLE 2.—STATE PROFILE OF COLLECTIONS AND EXPENDITURES, FISCAL YEAR 1983

[In thousands of dollars]

State	Total collections	AFDC collections	Non-AFDC collections	Total expenditures
Alabama .....	8,643	7,789	854	9,132
Alaska .....	9,704	1,780	7,924	4,028
Arizona .....	10,563	1,459	9,104	5,891
Arkansas .....	7,401	4,593	2,808	4,539
California .....	254,586	136,963	117,623	127,171
Colorado .....	17,178	9,330	7,848	7,987
Connecticut .....	39,227	20,628	18,599	11,899
Delaware .....	8,097	2,276	5,821	3,299
District of Columbia .....	3,521	2,421	1,100	4,968
Florida .....	19,080	10,408	8,672	15,718
Georgia .....	13,439	11,355	2,084	8,208
Guam .....	391	259	131	315
Hawaii .....	10,087	4,482	5,605	3,705
Idaho .....	4,696	3,812	884	2,157
Illinois .....	32,025	18,971	13,054	16,320
Indiana .....	20,789	17,646	3,142	6,766
Iowa .....	29,185	19,484	9,701	5,939
Kansas .....	9,924	7,810	2,114	5,220
Kentucky .....	19,711	6,325	13,387	7,674
Louisiana .....	26,477	9,653	16,824	12,861
Maine .....	10,235	8,402	1,833	2,942
Maryland .....	77,129	27,773	49,356	16,355
Massachusetts .....	72,319	40,476	31,844	19,794
Michigan .....	273,799	97,694	176,105	41,365
Minnesota .....	44,893	25,708	19,184	17,358
Mississippi .....	4,887	4,544	343	2,936
Missouri .....	18,118	11,500	6,618	9,080
Montana .....	2,415	1,834	582	1,128
Nebraska .....	20,324	3,959	16,365	3,546
Nevada .....	5,556	1,824	3,731	3,437
New Hampshire .....	11,640	2,667	8,972	2,198
New Jersey .....	143,225	41,103	102,122	36,082
New Mexico .....	4,614	2,891	1,722	3,221
New York .....	174,454	68,622	105,831	86,683
North Carolina .....	30,830	18,795	12,035	12,296
North Dakota .....	2,723	2,011	712	1,297
Ohio .....	34,862	33,403	1,459	19,824
Oklahoma .....	5,233	3,648	1,585	6,117
Oregon .....	35,869	12,688	23,181	11,032
Pennsylvania .....	285,829	47,135	238,694	42,962
Puerto Rico .....	31,985	917	31,068	3,332
Rhode Island .....	7,542	4,222	3,320	2,141
South Carolina .....	7,461	6,015	1,446	2,887
South Dakota .....	2,847	2,175	672	1,198
Tennessee .....	19,077	5,567	13,510	7,041
Texas .....	17,941	10,879	7,062	15,071
Utah .....	13,594	11,643	1,952	6,641
Vermont .....	2,831	2,629	202	958
Virgin Islands .....	684	140	544	319
Virginia .....	13,619	11,758	1,860	7,299
Washington .....	41,667	26,519	15,148	16,979
West Virginia .....	3,434	3,311	123	2,550
Wisconsin .....	56,041	39,582	16,459	20,662

TABLE 2.—STATE PROFILE OF COLLECTIONS AND EXPENDITURES, FISCAL YEAR 1983—Continued

(In thousands of dollars)

State	Total collections	AFDC collections	Non-AFDC collections	Total expenditures
Wyoming .....	1,017	790	227	373
Nationwide total .....	2,023,416	880,268	1,143,148	690,902

Source: Office of Child Support Enforcement.

TABLE 3.—CHILD SUPPORT COLLECTIONS PER DOLLAR OF ADMINISTRATIVE EXPENDITURES, FISCAL YEAR 1983

State	Total collections/ total expenditures	AFDC collections/ total expenditures	Non-AFDC collections/total expenditures
Alabama .....	\$0.95	\$0.85	\$0.09
Alaska .....	2.41	.44	1.97
Arizona .....	1.79	.25	1.55
Arkansas .....	1.63	1.01	.62
California .....	2.00	1.08	.92
Colorado .....	2.15	1.17	.98
Connecticut .....	3.30	1.73	1.56
Delaware .....	2.45	.69	1.76
District of Columbia .....	.71	.49	.22
Florida .....	1.21	.66	.55
Georgia .....	1.64	1.38	.25
Guam .....	1.24	.82	.42
Hawaii .....	2.72	1.21	1.51
Idaho .....	2.18	1.77	.41
Illinois .....	1.96	1.16	.80
Indiana .....	3.07	2.61	.46
Iowa .....	4.91	3.28	1.63
Kansas .....	1.90	1.50	.41
Kentucky .....	2.57	.82	1.74
Louisiana .....	2.06	.75	1.31
Maine .....	3.48	2.86	.62
Maryland .....	4.72	1.70	3.02
Massachusetts .....	3.65	2.04	1.61
Michigan .....	6.62	2.36	4.26
Minnesota .....	2.59	1.48	1.11
Mississippi .....	1.66	1.55	.12
Missouri .....	2.00	1.27	.73
Montana .....	2.14	1.63	.52
Nebraska .....	5.73	1.12	4.62
Nevada .....	1.62	.53	1.09
New Hampshire .....	5.30	1.21	4.08
New Jersey .....	3.97	1.14	2.83
New Mexico .....	1.43	.90	.53
New York .....	2.01	.79	1.22
North Carolina .....	2.51	1.53	.98
North Dakota .....	2.10	1.55	.55
Ohio .....	1.76	1.68	.07
Oklahoma .....	.86	.60	.26
Oregon .....	3.25	1.15	2.10
Pennsylvania .....	6.65	1.10	5.56
Puerto Rico .....	9.60	.28	9.32
Rhode Island .....	3.52	1.97	1.55



TABLE 3.—CHILD SUPPORT COLLECTIONS PER DOLLAR OF ADMINISTRATIVE EXPENDITURES, FISCAL YEAR 1983—Continued

State	Total collections/ total expenditures	AFDC collections/ total expenditures	Non-AFDC collections/total expenditures
South Carolina.....	2.58	2.08	.50
South Dakota.....	2.38	1.81	.56
Tennessee.....	2.71	.79	1.92
Texas.....	1.19	.72	.47
Utah.....	2.05	1.75	.29
Vermont.....	2.96	2.74	.21
Virgin Islands.....	2.14	.44	1.70
Virginia.....	1.87	1.61	.25
Washington.....	2.45	1.56	.89
West Virginia.....	1.35	1.30	.05
Wisconsin.....	2.71	1.92	.80
Wyoming.....	2.72	2.12	.61
Nationwide total.....	2.93	1.27	1.65

Source: Office of Child Support Enforcement.

TABLE 4.—TOTAL CHILD SUPPORT COLLECTIONS, FISCAL YEARS 1979-1983

(In thousands of dollars)

State	1979	1980	1981	1982	1983
Alabama.....	6,854	6,573	5,021	8,060	8,643
Alaska.....	3,844	4,665	5,932	7,388	9,704
Arizona.....	6,411	7,073	8,755	10,421	10,563
Arkansas.....	3,921	4,568	4,856	5,553	7,401
California.....	199,945	194,793	201,426	247,023	254,586
Colorado.....	4,020	5,916	12,352	16,938	17,178
Connecticut.....	23,033	25,994	29,602	37,078	39,227
Delaware.....	5,813	6,460	6,945	7,383	8,097
District of Columbia.....	1,086	1,654	1,909	2,574	3,521
Florida.....	10,523	12,326	16,932	20,274	19,080
Georgia.....	5,553	6,480	8,304	9,500	13,439
Guam.....	79	104	149	259	391
Hawaii.....	5,150	6,951	7,547	8,224	10,087
Idaho.....	2,501	2,915	3,278	4,199	4,696
Illinois.....	10,740	12,447	13,943	21,600	32,025
Indiana.....	9,073	10,612	12,339	14,589	20,789
Iowa.....	13,017	16,037	21,488	26,809	29,185
Kansas.....	3,975	5,359	6,908	9,622	9,924
Kentucky.....	4,881	14,713	14,732	14,647	19,711
Louisiana.....	12,679	15,046	17,833	22,320	26,477
Maine.....	4,574	4,945	5,677	7,465	10,235
Maryland.....	20,856	26,398	35,193	55,830	77,129
Massachusetts.....	36,338	42,812	52,955	63,612	72,319
Michigan.....	248,414	290,152	305,396	240,438	273,799
Minnesota.....	21,370	24,898	29,988	37,834	44,893
Mississippi.....	1,662	2,128	2,510	2,691	4,887
Missouri.....	5,829	9,736	12,364	18,589	18,118
Montana.....	1,213	1,524	1,698	1,750	2,415
Nebraska.....	2,468	2,941	10,832	17,124	20,324
Nevada.....	3,868	3,076	4,011	4,712	5,556
New Hampshire.....	2,089	2,233	2,336	4,620	11,640

TABLE 4.—TOTAL CHILD SUPPORT COLLECTIONS, FISCAL YEARS 1979–1983—Continued

(In thousands of dollars)

State	1979	1980	1981	1982	1983
New Jersey .....	94,005	102,552	104,853	130,493	143,225
New Mexico .....	1,680	2,041	2,748	3,471	4,614
New York .....	136,361	145,014	141,670	151,802	174,454
North Carolina .....	9,168	11,443	17,196	22,267	30,830
North Dakota .....	1,723	1,667	1,936	2,312	2,723
Ohio .....	22,832	26,452	31,467	30,954	34,862
Oklahoma .....	1,826	2,234	3,224	3,896	5,233
Oregon .....	88,502	96,495	105,670	47,323	35,869
Pennsylvania .....	186,718	198,998	222,548	255,481	285,829
Puerto Rico .....	1,916	2,215	2,459	8,560	31,985
Rhode Island .....	3,575	3,727	3,772	5,381	7,542
South Carolina .....	3,639	4,505	5,323	6,153	7,461
South Dakota .....	1,407	1,634	1,768	2,122	2,847
Tennessee .....	8,976	11,143	10,145	17,491	19,077
Texas .....	8,207	9,877	11,633	13,841	17,941
Utah .....	6,624	7,427	9,710	11,948	13,594
Vermont .....	1,386	1,773	2,200	3,258	2,831
Virgin Islands .....	260	346	429	657	684
Virginia .....	9,197	8,749	9,904	12,230	13,619
Washington .....	27,018	28,298	31,756	36,627	41,667
West Virginia .....	1,413	1,976	2,349	2,637	3,434
Wisconsin .....	34,267	36,803	42,195	43,152	56,041
Wyoming .....	520	668	781	877	1,017
Nationwide total .....	1,332,999	1,477,564	1,628,944	1,762,061	2,021,901

Source: Office of Child Support Enforcement.

TABLE 5.—TOTAL AFDC COLLECTIONS, FISCAL YEARS 1979–1983

(In thousands of dollars)

State	1979	1980	1981	1982	1983
Alabama .....	6,838	6,572	5,021	8,060	7,789
Alaska .....	334	588	772	1,048	1,780
Arizona .....	642	926	1,221	1,250	1,459
Arkansas .....	2,428	2,388	2,684	3,032	4,593
California .....	117,532	95,127	100,437	136,394	136,963
Colorado .....	3,525	3,742	4,555	5,990	9,330
Connecticut .....	11,416	13,163	15,684	21,308	20,628
Delaware .....	1,386	1,700	2,001	1,958	2,276
District of Columbia .....	907	1,286	1,379	1,813	2,421
Florida .....	8,598	10,772	12,288	14,286	10,408
Georgia .....	4,771	5,720	7,441	8,107	11,355
Guam .....	78	103	117	165	259
Hawaii .....	2,544	2,853	3,127	3,345	4,482
Idaho .....	2,047	2,309	2,659	3,433	3,812
Illinois .....	9,916	11,271	12,347	17,015	18,971
Indiana .....	8,116	9,163	10,129	11,650	17,646
Iowa .....	10,654	12,774	15,218	18,114	19,484
Kansas .....	3,454	4,357	5,279	7,787	7,810
Kentucky .....	4,616	3,924	4,314	3,752	6,325
Louisiana .....	5,244	6,699	7,429	9,301	9,653
Maine .....	4,133	4,354	4,732	5,991	8,402

TABLE 5.—TOTAL AFDC COLLECTIONS, FISCAL YEARS 1979-1983—Continued

(In thousands of dollars)

State	1979	1980	1981	1982	1983
Maryland .....	10,929	13,153	15,912	16,317	27,773
Massachusetts .....	29,145	31,191	38,243	40,368	40,476
Michigan .....	76,375	77,595	87,304	101,339	97,694
Minnesota .....	14,510	16,269	20,290	23,125	25,708
Mississippi .....	1,556	1,956	2,284	2,396	4,544
Missouri .....	4,165	4,998	6,423	12,437	11,500
Montana .....	685	830	1,039	1,237	1,834
Nebraska .....	2,083	2,470	3,022	3,176	3,959
Nevada .....	517	685	879	1,510	1,824
New Hampshire .....	2,089	2,154	2,220	2,303	2,667
New Jersey .....	28,622	30,687	31,985	33,606	41,103
New Mexico .....	1,160	1,409	1,907	2,218	2,891
New York .....	56,588	48,694	47,790	54,632	68,622
North Carolina .....	7,714	9,414	11,774	12,795	18,795
North Dakota .....	1,379	1,325	1,542	1,763	2,011
Ohio .....	21,974	25,548	30,494	30,082	33,403
Oklahoma .....	1,260	1,524	2,254	2,607	3,648
Oregon .....	12,977	14,142	13,305	16,599	12,688
Pennsylvania .....	33,190	33,434	37,381	40,586	47,135
Puerto Rico .....	429	626	717	679	917
Rhode Island .....	3,438	3,581	3,624	3,869	4,222
South Carolina .....	3,159	3,775	4,437	4,712	6,015
South Dakota .....	1,137	1,264	1,225	1,432	2,175
Tennessee .....	3,871	4,167	3,519	5,901	5,567
Texas .....	6,370	7,155	8,308	6,869	10,879
Utah .....	5,441	6,111	8,133	10,065	11,643
Vermont .....	1,201	1,498	1,940	3,039	2,629
Virgin Islands .....	143	131	150	179	140
Virginia .....	9,080	8,264	8,737	10,398	11,758
Washington .....	18,318	18,128	19,244	22,160	26,519
West Virginia .....	1,251	1,843	2,201	2,488	3,311
Wisconsin .....	26,044	28,792	33,029	32,020	39,582
Wyoming .....	379	471	536	619	790
Nationwide total .....	596,366	603,074	670,688	787,322	880,268

Source: Office of Child Support Enforcement.

TABLE 6.—TOTAL NON-AFDC COLLECTIONS, FISCAL YEARS 1979-1983

(In thousands of dollars)

State	1979	1980	1981	1982	1983
Alabama .....	16	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	854
Alaska .....	3,510	4,077	5,159	6,340	7,924
Arizona .....	5,769	6,147	7,534	9,171	9,104
Arkansas .....	1,494	2,180	2,172	2,521	2,808
California .....	82,412	99,666	100,989	110,623	117,623
Colorado .....	496	2,173	7,797	10,948	7,848
Connecticut .....	11,617	12,830	13,918	15,770	18,599
Delaware .....	4,428	4,760	4,943	5,426	5,821
District of Columbia .....	179	368	530	761	1,100
Florida .....	1,926	1,554	4,643	5,988	8,672
Georgia .....	783	759	863	1,393	2,084

TABLE 6.—TOTAL NON-AFDC COLLECTIONS, FISCAL YEARS 1979–1983—Continued

[In thousands of dollars]

State	1979	1980	1981	1982	1983
Guam .....		( <sup>1</sup> )	32	95	131
Hawaii .....	2,606	4,098	4,420	4,879	5,605
Idaho .....	454	606	617	765	884
Illinois .....	823	1,176	1,596	4,585	13,054
Indiana .....	957	1,450	2,210	2,939	3,142
Iowa .....	2,363	3,262	6,270	8,696	9,701
Kansas .....	520	1,001	1,629	1,835	2,114
Kentucky .....	266	10,789	10,418	10,895	13,387
Louisiana .....	7,434	8,348	10,404	13,018	16,824
Maine .....	441	591	945	1,474	1,833
Maryland .....	9,927	13,246	19,281	39,513	49,356
Massachusetts .....	7,193	11,621	14,712	23,244	31,844
Michigan .....	172,039	212,557	218,092	139,099	176,105
Minnesota .....	6,861	8,629	9,698	14,709	19,184
Mississippi .....	106	172	226	295	343
Missouri .....	1,664	4,738	5,941	6,152	6,618
Montana .....	528	694	659	513	582
Nebraska .....	385	471	7,810	13,949	16,365
Nevada .....	3,351	2,390	3,132	3,202	3,731
New Hampshire .....		78	116	2,318	8,972
New Jersey .....	65,383	71,865	72,868	96,887	102,122
New Mexico .....	520	631	841	1,252	1,722
New York .....	79,773	96,320	93,880	97,171	105,831
North Carolina .....	1,454	2,029	5,422	9,472	12,035
North Dakota .....	344	342	394	549	712
Ohio .....	858	904	972	872	1,459
Oklahoma .....	566	710	970	1,289	1,585
Oregon .....	75,525	82,354	92,364	30,725	23,181
Pennsylvania .....	153,528	165,564	185,167	214,895	238,694
Puerto Rico .....	1,477	1,589	1,742	7,881	31,068
Rhode Island .....	137	146	148	1,512	3,320
South Carolina .....	480	730	886	1,441	1,446
South Dakota .....	270	370	543	690	672
Tennessee .....	5,105	6,976	6,626	11,591	13,510
Texas .....	1,837	2,722	3,324	6,973	7,062
Utah .....	1,183	1,317	1,577	1,883	1,952
Vermont .....	186	276	260	219	202
Virginia .....	116	484	1,167	1,832	1,860
Virgin Islands .....	117	215	278	479	544
Washington .....	8,699	10,170	12,512	14,467	15,148
West Virginia .....	162	133	147	149	123
Wisconsin .....	8,224	8,010	9,165	11,132	16,459
Wyoming .....	141	197	245	258	227
Nationwide total .....	736,633	874,491	958,257	974,739	1,143,148

<sup>1</sup> Collections too small to show in thousands.

Source: Office of Child Support Enforcement.



TABLE 7.—ADMINISTRATIVE EXPENDITURES FOR THE CHILD SUPPORT ENFORCEMENT PROGRAM,  
FISCAL YEARS 1979-1983 <sup>1</sup>

[In thousands of dollars]

State	1979	1980	1981	1982	1983
Alabama .....	4,633	5,368	5,637	7,089	9,132
Alaska .....	2,137	2,245	2,422	2,807	4,028
Arizona .....	2,248	4,012	4,659	3,415	5,891
Arkansas .....	2,290	3,191	3,657	4,722	4,539
California .....	75,579	90,486	100,807	112,766	127,171
Colorado .....	3,919	5,497	6,068	6,835	7,987
Connecticut .....	5,463	6,436	7,833	9,462	11,899
Delaware .....	852	1,011	2,512	2,066	3,299
District of Columbia .....	1,652	2,650	3,255	4,267	4,968
Florida .....	7,049	9,709	10,345	14,109	15,718
Georgia .....	3,238	4,148	4,777	7,089	8,208
Guam .....	108	143	161	222	315
Hawaii .....	1,408	2,045	2,708	3,094	3,705
Idaho .....	1,063	1,157	1,464	1,684	2,157
Illinois .....	6,930	10,486	14,622	16,627	16,320
Indiana .....	4,269	5,532	6,147	7,619	6,766
Iowa .....	4,239	4,749	5,808	6,238	5,939
Kansas .....	1,819	3,236	3,843	4,660	5,220
Kentucky .....	4,027	4,771	6,012	7,075	7,674
Louisiana .....	7,079	7,818	9,401	10,546	12,861
Maine .....	1,229	1,564	1,863	2,625	2,942
Maryland .....	8,177	10,371	13,973	13,886	16,355
Massachusetts .....	6,710	9,986	14,271	16,533	19,794
Michigan .....	21,957	26,708	30,364	36,575	41,365
Minnesota .....	9,273	11,994	12,937	15,407	17,358
Mississippi .....	1,574	1,722	1,965	2,408	2,936
Missouri .....	5,355	6,385	7,287	7,627	9,080
Montana .....	943	1,002	1,062	1,049	1,128
Nebraska .....	1,378	1,585	2,328	3,577	3,546
Nevada .....	1,891	2,437	3,023	3,130	3,437
New Hampshire .....	847	1,032	1,019	1,483	2,198
New Jersey .....	21,677	24,809	28,578	33,260	36,082
New Mexico .....	1,437	1,859	2,147	2,674	3,221
New York .....	61,665	65,330	64,658	77,821	86,683
North Carolina .....	5,721	7,323	8,705	11,149	12,296
North Dakota .....	702	787	1,024	1,210	1,297
Ohio .....	11,409	15,511	18,307	18,525	19,824
Oklahoma .....	2,771	3,818	4,896	6,128	6,117
Oregon .....	7,475	10,101	11,569	11,300	11,032
Pennsylvania .....	13,499	24,715	29,943	34,527	42,962
Puerto Rico .....	862	1,017	1,667	2,868	3,332
Rhode Island .....	1,079	1,423	1,584	2,033	2,141
South Carolina .....	1,777	1,853	2,215	2,353	2,887
South Dakota .....	1,060	981	1,026	1,175	1,198
Tennessee .....	3,046	4,508	5,504	6,420	7,041
Texas .....	11,808	14,606	14,256	16,492	15,071
Utah .....	3,094	4,208	4,982	5,629	6,641
Vermont .....	649	799	891	812	958
Virginia .....	4,787	6,194	7,038	7,645	7,299
Virgin Islands .....	483	494	323	217	319
Washington .....	10,733	12,004	11,826	13,300	16,979
West Virginia .....	1,676	1,929	2,404	2,961	2,550

TABLE 7.—ADMINISTRATIVE EXPENDITURES FOR THE CHILD SUPPORT ENFORCEMENT PROGRAM,  
FISCAL YEARS 1979-1983 <sup>1</sup>—Continued

[In thousands of dollars]

State	1979	1980	1981	1982	1983
Wisconsin .....	7,562	12,329	11,433	15,211	20,662
Wyoming .....	162	205	278	380	373
Nationwide total .....	374,470	466,280	527,483	610,783	690,902

<sup>1</sup> Federal and State combined.

Source: Office of Child Support Enforcement.

TABLE 8.—AFDC CHILD SUPPORT COLLECTIONS PER DOLLAR OF TOTAL ADMINISTRATIVE  
EXPENDITURES, FISCAL YEARS 1979-1983

United States	1979	1980	1981	1982	1983
Alabama .....	1.48	1.22	.89	1.14	.85
Alaska .....	.16	.26	.32	.37	.44
Arizona .....	.29	.23	.26	.37	.25
Arkansas .....	1.06	.75	.73	.64	1.01
California .....	1.56	1.05	1.00	1.21	1.08
Colorado .....	.90	.68	.75	.88	1.17
Connecticut .....	2.09	2.05	2.00	2.25	1.73
Delaware .....	1.63	1.68	.80	.95	.69
District of Columbia .....	.55	.49	.42	.42	.49
Florida .....	1.22	1.11	1.19	1.01	.66
Georgia .....	1.47	1.38	1.56	1.14	1.38
Guam .....	.73	.72	.72	.74	.82
Hawaii .....	1.81	1.40	1.15	1.08	1.21
Idaho .....	1.92	1.99	1.82	2.04	1.77
Illinois .....	1.43	1.07	.84	1.02	1.16
Indiana .....	1.90	1.66	1.65	1.53	2.61
Iowa .....	2.51	2.69	2.62	2.90	3.28
Kansas .....	1.90	1.35	1.37	1.67	1.50
Kentucky .....	1.15	.82	.72	.53	.82
Louisiana .....	.74	.86	.79	.88	.75
Maine .....	3.36	2.78	2.54	2.28	2.86
Maryland .....	1.34	1.27	1.14	1.18	1.70
Massachusetts .....	4.34	3.12	2.68	2.44	2.04
Michigan .....	3.48	2.91	2.88	2.77	2.36
Minnesota .....	1.56	1.36	1.57	1.50	1.48
Mississippi .....	.99	1.14	1.16	1.00	1.55
Missouri .....	.78	.78	.88	1.63	1.27
Montana .....	.73	.83	.98	1.18	1.63
Nebraska .....	1.51	1.56	1.30	.89	1.12
Nevada .....	.27	.28	.29	.48	.53
New Hampshire .....	2.47	2.09	2.18	1.55	1.21
New Jersey .....	1.32	1.24	1.12	1.01	1.14
New Mexico .....	.81	.76	.89	.83	.90
New York .....	.92	.75	.74	.70	.79
North Carolina .....	1.35	1.29	1.35	1.15	1.53
North Dakota .....	1.96	1.68	1.51	1.46	1.55
Ohio .....	1.93	1.65	1.67	1.62	1.68
Oklahoma .....	.45	.40	.46	.43	.60
Oregon .....	1.74	1.40	1.15	1.47	1.15
Pennsylvania .....	2.46	1.35	1.25	1.18	1.10

TABLE 8.—AFDC CHILD SUPPORT COLLECTIONS PER DOLLAR OF TOTAL ADMINISTRATIVE EXPENDITURES, FISCAL YEARS 1979–1983—Continued

United States	1979	1980	1981	1982	1983
Puerto Rico .....	.51	.62	.43	.24	.28
Rhode Island .....	3.19	2.52	2.29	1.90	1.97
South Carolina .....	1.78	2.04	2.00	2.00	2.08
South Dakota .....	1.07	1.29	1.19	1.22	1.81
Tennessee .....	1.27	.92	.64	.92	.79
Texas .....	.54	.49	.58	.42	.72
Utah .....	1.76	1.45	1.63	1.79	1.75
Vermont .....	1.85	1.87	2.18	3.74	2.74
Virgin Islands .....	.30	.27	.47	.82	.44
Virginia .....	1.90	1.33	1.24	1.36	1.61
Washington .....	1.71	1.51	1.63	1.67	1.56
West Virginia .....	.75	.96	.92	.84	1.30
Wisconsin .....	3.44	2.34	2.89	2.11	1.92
Wyoming .....	2.33	2.29	1.93	1.63	2.12
Nationwide total .....	1.59	1.29	1.27	1.29	1.27

Source: Office of Child Support Enforcement.

TABLE 9.—INCENTIVE PAYMENTS TO STATES AND LOCALITIES FOR AFDC COLLECTIONS, FISCAL YEARS 1979–1983

[In thousands of dollars]

State	1979	1980	1981	1982	1983
Alabama .....	801	493	628	704	1,234
Alaska .....	7	9	113	158	245
Arizona .....	79	116	147	157	198
Arkansas .....	246	260	385	412	672
California .....	13,868	11,630	9,296	13,891	13,102
Colorado .....	407	524	755	914	1,337
Connecticut .....	430	809	2,325	3,117	2,977
Delaware .....	23	97	300	294	341
District of Columbia .....	11	51	169	223	267
Florida .....	445	1,381	2,080	1,871	2,108
Georgia .....	384	577	1,078	1,195	1,685
Guam .....			2	2	4
Hawaii .....	234	215	497	413	524
Idaho .....	6	64	428	463	471
Illinois .....	414	985	1,936	2,527	2,807
Indiana .....	943	1,173	1,502	1,401	2,424
Iowa .....	1,456	1,752	2,106	2,458	3,184
Kansas .....	255	408	770	1,085	1,103
Kentucky .....	552	463	666	502	896
Louisiana .....	731	923	1,181	1,202	1,503
Maine .....	61	238	699	892	1,250
Maryland .....	662	1,396	2,131	2,052	3,896
Massachusetts .....	46	1,471	5,597	6,071	6,046
Michigan .....	12,815	11,806	11,550	13,717	13,408
Minnesota .....	1,834	3,369	2,737	4,383	3,813
Mississippi .....	2	20	57	95	310
Missouri .....	586	683	888	1,816	1,622
Montana .....	15	26	153	182	274
Nebraska .....	265	328	419	423	527
Nevada .....	74	97	125	186	224

TABLE 9.—INCENTIVE PAYMENTS TO STATES AND LOCALITIES FOR AFDC COLLECTIONS, FISCAL YEARS 1979–1983—Continued

[In thousands of dollars]

State	1979	1980	1981	1982	1983
New Hampshire.....	29	109	343	349	376
New Jersey.....	4,070	4,350	4,681	4,877	6,036
New Mexico.....	21	80	282	333	434
New York.....	8,787	7,499	7,163	8,193	10,308
North Carolina.....	1,021	1,253	1,724	1,898	2,801
North Dakota.....	191	186	219	251	284
Ohio.....	3,295	3,836	4,574	4,512	5,010
Oklahoma.....	42	119	326	387	547
Oregon.....	296	712	1,845	2,378	1,839
Pennsylvania.....	4,701	4,494	5,399	5,670	6,577
Puerto Rico.....	4	10	73	91	127
Rhode Island.....	53	170	500	552	619
South Carolina.....	328	283	381	512	698
South Dakota.....	45	52	118	183	378
Tennessee.....	493	576	568	835	782
Texas.....	188	491	1,114	959	1,609
Utah.....	596	744	1,238	1,509	1,791
Vermont.....	22	87	289	453	392
Virgin Islands.....	1	4	23	25	21
Virginia.....	262	693	1,130	1,502	1,728
Washington.....	201	927	2,817	3,247	3,882
West Virginia.....	31	34	389	369	492
Wisconsin.....	3,905	4,313	4,945	4,655	5,417
Wyoming.....	5	15	69	86	117
Nationwide total.....	66,250	72,411	90,931	106,636	120,718

Source: Office of Child Support Enforcement.

### III. General Discussion of the Bill

#### STATEMENT OF PURPOSE

##### (Section 2 of the bill)

*Present law.*—The IV-D statute currently specifies that funds are authorized for the purpose of “enforcing the support obligations owed by absent parents to their children and the spouse (or former spouse) with whom such children are living, locating absent parents, establishing paternity, and obtaining child and spousal support . . . .” There is no language in the purpose clause spelling out that services are to be provided to both AFDC and non-AFDC families. However, there is a specific provision elsewhere in the statute requiring that the child support collection or paternity determination services established under a State’s child support program “shall be made available to any individual not otherwise eligible for such services upon application filed by such individual . . . .”

*Committee amendment.*—The Committee is proposing to add language to the present purpose clause as follows: “and assuring that assistance in obtaining support will be available under this part to all children (whether or not eligible for aid under part A) for whom such assistance is requested.” This language will make clear the



Committee's intent that the Administration and the States fully implement the provision in present law that requires the States to make available to non-AFDC families the services that are provided under the State program for AFDC families.

The amendment is effective upon enactment.

## FEDERAL MATCHING OF ADMINISTRATIVE COSTS

### (Section 3 of the bill)

*Present law.*—The Federal Government pays 70 percent of State and local administrative costs for services to both AFDC and non-AFDC families, on an open-end entitlement basis. The estimated Federal share of administrative costs for fiscal year 1983 is \$499 million. The Administration estimates that under present law the costs will increase to \$538 million in 1984, and \$564 million in 1985.

*Committee amendment.*—Federal matching funds will continue to be available to the States on an open-end entitlement basis. However, the percentage matching rate is gradually reduced as follows: 69 percent in fiscal year 1987, 68 percent in fiscal year 1988, 67 percent in fiscal year 1989, 66 percent in fiscal year 1990, and 65 percent in fiscal year 1991 and years thereafter.

The Committee believes that in a program which assures States of open-end funding on an entitlement basis, it is particularly appropriate for both the Federal and State governments to bear a substantial share of the financing requirements. By increasing the State matching share, the Committee expects that State responsibility for and interest in the effectiveness of child support enforcement and paternity establishment services will also be increased.

In 1975, when the IV-D program began, it was necessary to have a very high matching rate in order to persuade the States to participate. Now that the program has proved its value, as the testimony on behalf of the National Governors' Association before this Committee confirms, it is time to move toward a more equal sharing of the costs. The Committee recognizes that in the short run this small change in the Federal matching rate will not result in significant Federal savings. However, the Committee believes that, over time, the increased stake by the States in this program will have the effect of encouraging closer scrutiny of expenditures of scarce dollars. In addition, this matching arrangement will encourage increased emphasis on effective and efficient performance in order to obtain increased funds available from the new incentives.

It is not the intent of the Congress to match all costs that might be related to operating a child support enforcement program. For example, the Committee believes Federal matching should not be available for expenditures related to incarceration of delinquent obligors and providing defense counsel for absent parents. The Committee expects the Secretary to review expenditure claims to determine if they are an integral part of this program.

## FEDERAL INCENTIVE PAYMENTS

(Section 4 of the bill)

*Present law.*—The IV-D statute provides for an incentive payment to States and localities to encourage them to participate in the child support and paternity establishment program. The incentive is equal to 12 percent of collections made on behalf of AFDC families, and is financed totally out of the Federal share of collections. The incentive payments were \$91 million in fiscal year 1981, \$107 million in 1982, and \$121 million in 1983. The Administration estimates that under present law the incentives would be \$117 million in 1984, and \$124 million in 1985.

*Committee amendment.*—The Committee amendment repeals the current 12 percent incentive formula, replacing it with a new formula that is designed to encourage States to develop programs that emphasize collections on behalf of both AFDC and non-AFDC families, and to improve program cost effectiveness. The new formula requires the Secretary of Health and Human Services to make incentive payments as follows:

The basic incentive payment will be equal to 6 percent of the State's AFDC collections, and, subject to the cap described below, 6 percent of its non-AFDC collections. To the extent that AFDC or non-AFDC collections exceed combined administrative costs for both AFDC and non-AFDC, higher incentives will be paid on a sliding scale up to 10 percent of AFDC and 10 percent of non-AFDC collections, according to the following cost/collection ratios:

*AFDC incentive*

Ratio of AFDC collections to combined AFDC/ non-AFDC administrative costs:	Incentive equal to this per- cent of AFDC collections:
1.4:1 .....	6.5
1.6:1 .....	7.0
1.8:1 .....	7.5
2.0:1 .....	8.0
2.2:1 .....	8.5
2.4:1 .....	9.0
2.6:1 .....	9.5
2.8:1 .....	10.0

*Non-AFDC incentive*

Ratio of non-AFDC collections to combined AFDC/non-AFDC administrative costs:	Incentive equal to this per- cent of non-AFDC collec- tions:
1.4:1 .....	6.5
1.6:1 .....	7.0
1.8:1 .....	7.5
2.0:1 .....	8.0
2.2:1 .....	8.5
2.4:1 .....	9.0
2.6:1 .....	9.5
2.8:1 .....	10.0

The total dollar amount of incentives paid for non-AFDC families may not exceed the amount of the State's incentive payment for

AFDC collections. The Committee believes that this "cap" provision will encourage the States to provide a balance in their programs, so that both AFDC and non-AFDC families may anticipate a fair share of program resources. The Committee believes that a "cap" on non-AFDC incentive payments is also necessary so that States will not be encouraged simply to transfer to the federally-financed IV-D program those child support activities which are currently being financed out of State and local funds, with no increase in the level of child support services.

The Committee amendment gives States the option of excluding the laboratory costs of determining paternity from combined administrative costs for purposes of computing incentive payments. This will mean that States will not be discouraged from using laboratory tests, which sometimes may be costly, as part of their paternity establishment procedures.

In order to assure the participation of localities in the child support enforcement program, the bill requires States to pass through to those localities which participate in the costs of the program their appropriate share of any incentive payments received by the States. The appropriate share will be determined by the State on the basis of each jurisdiction's contribution to the overall efficiency and effectiveness of the program. This determination should take into account the collections and expenses of various jurisdictions but would not necessarily be based strictly on the same cost-effectiveness ratio as applies to the Statewide determination of incentives. States might not wish, for example, to apply the provision in a way which would discourage jurisdictions from assuming administrative responsibilities such as processing applications or pursuing activities (such as paternity determination) which are essential to the program but do not yield immediate collections.

The Committee provision also requires that incentive funds must be estimated and projected on an annual basis so that States can be provided their payments in advance, subject to later adjustment.

To encourage increased cooperation among States in interstate cases, the bill provides that amounts collected in interstate cases will be credited, for purposes of computing the incentive payments, to both the initiating and responding States.

As part of the new formula, the Committee has included for fiscal years 1986 and 1987 "hold-harmless" protection for the States which assures that they will receive the higher of the amount due them under the new incentive and Federal match provisions, or 80 percent of what they would have received for that year under the provisions of prior law.

The provision is effective beginning with fiscal year 1986.

#### MATCHING FOR AUTOMATED MANAGEMENT SYSTEMS USED IN INCOME WITHHOLDING AND OTHER PROCEDURES

(Section 5 of the bill)

*Present law.*—Ninety percent Federal matching is available, on an open-end entitlement basis, to States that choose to establish an automatic data processing and information retrieval system. The system must be designed to assist program managers in the admin-



istration of the State plan, so as to control, account for, and monitor all the factors in the support enforcement collection and paternity determination process. Funds may be used to plan, design, develop, and install or enhance the system. The Secretary must approve the system as meeting specified conditions before matching is available. For fiscal year 1984, \$15 million has been allocated for this use.

*Committee amendment.*—Language is added to clarify the Committee's intent that the 90 percent matching funds which are available for information systems under specified circumstances may also be used for the development and improvement of the income withholding and other procedures required by the bill, through the monitoring of child support payments, the maintenance of accurate records regarding the payment of child support, and the provision of prompt notice to appropriate officials with respect to any arrearages that occur. This use of the 90 percent matching funds is optional with the State.

In addition, the amendment clarifies the circumstances under which the 90 percent match may be used for computer hardware. Under current interpretation of the statute, States have been able to receive only small amounts of 90 percent matching funds in acquiring hardware, and this has been cited as one reason why the States have made little use of the 90 percent matching provision. The current interpretation is based on language that was included in the Finance Committee report when the provision was first enacted, which stated that the 90 percent rate would be available for the costs of developing and implementing computer systems, but not for the costs of operating them. The Department interpreted this language as allowing the use of the 90 percent funds for expenditures for hardware while a system is being developed and implemented, but not after actual implementation. Thus, a system that is leased or otherwise paid for over time, as is required by departmental regulations, may receive matching only for amounts actually paid out prior to the time the system begins to be used.

The Committee intends by this amendment that, although the costs of operating a system, including staff and other costs, should continue to be ineligible for the 90 percent match, expenditures for the hardware that is necessary to operate a system should be eligible, even though those expenditures continue beyond the date the system becomes operational.

The provision is effective October 1, 1984.

## IMPROVED CHILD SUPPORT ENFORCEMENT THROUGH REQUIRED STATE LAWS AND PROCEDURES

(Section 6 of the bill)

*Present law.*—The child support enforcement statute does not specify the types of procedures States must use in operating their IV-D programs. In practice, States have adopted a variety of procedures for use in child support enforcement. In some States the procedures adopted have resulted in relatively effective programs. Many States, however, have not adopted particular procedures which have been found to be especially effective, such as manda-



tory income withholding. The result is that child support enforcement under the IV-D program is uneven from State-to-State, and in many cases is of limited effectiveness.

*Committee amendment.*—The Committee has had the benefit of extensive testimony on how to strengthen the child support enforcement program. Four hearings were held at which members of the Committee heard the recommendations of a wide range of persons concerned with the child support program, including Members of Congress, representatives of the Administration, State program administrators, representatives of State and local government, and both custodial and non-custodial parents and their spokesmen. Based on the thorough and detailed testimony presented to the Committee, it is the Committee's belief that the current program can be strengthened and improved if all State child support agencies are required to use certain procedures. These procedures have been found to be effective in individual States. The Committee believes that their effectiveness will be even greater if they are used in all States. It is anticipated that uniformity in enforcement procedures will result in increased compliance with child support orders throughout the Nation.

Under the Committee's bill, States are required to enact laws establishing the following procedures with respect to their IV-D cases:

(1) *Mandatory wage withholding.*—In the case of each absent parent against whom a child support order is or has been issued or modified in the State, the State must provide for withholding from wage income, in accordance with the following conditions:

Withholding must occur without amendment of the order or further action by the court. The Committee believes that this requirement is particularly crucial to the effectiveness of any income withholding provision, because it means that the custodial parent will not have to experience the costs and delays involved in returning to court to get a garnishment decree or a new support order. Under the Committee provision, the required withholding procedures must be provided without the need for any application therefor on behalf of all IV-D (both AFDC and non-AFDC) families. Families who are not receiving IV-D services may file an application for such services to trigger the initiation of withholding by the agency on their behalf.

The amount withheld must be the amount of the current support order, plus amounts for arrearages and, at State option, for a fee to the employer to cover the cost of withholding. The amount withheld for arrearages may be subject to limitations provided under State law. The fee to the employer will be established by the State. The total amount withheld may not exceed the limits provided in sec. 303(b) of the Consumer Credit Protection Act. The limits provided in that law are 50 percent of disposable income in the case of an absent parent who has a second family, and 60 percent in the case of an absent parent without a second family. These limits are each increased by 5 percent (to 55 and 65) if there are arrearages with respect to a period prior to the 12-week period which ends with the beginning of the pay period involved.

Withholding must begin the earlier of (a) when the arrearage reaches an amount equal to one month's support payment, or (b)

when an absent parent requests withholding. States retain the discretion which they have under current law to begin withholding at any earlier time. The Committee heard extensive testimony to the effect that there are significant benefits to early withholding. As far as the custodial parent is concerned, that parent will be able to count on receiving the support payment without extensive delays. The absent parent will not accrue large arrearages which are often difficult or impossible to pay. The Committee also heard testimony in support of allowing absent parents to request withholding to begin before any arrearage develops. When such a system is in effect, the withholding procedure does not carry with it the stigma that may be attached when withholding occurs only after there are arrearages.

The Committee bill requires that the withholding system must be administered by an entity designated by the State (the IV-D agency, or another public entity, such as the courts), and provision must be made for expeditious distribution of amounts withheld. The State may provide procedures for the collection from employers and distribution to families of withheld amounts other than through a public agency or entity, so long as such procedures are publicly accountable, allow prompt distribution, and permit the keeping of records to document the payment of support.

The bill includes due process protection for the absent parent. The State must send the absent parent advance notice of withholding and the procedures to be followed if he wants to contest the action on the grounds that withholding is not proper in the case because of mistakes of fact. The withholding must be carried out in full compliance with all procedural due process requirements of the States. If the absent parent contests the withholding, the agency administering the system must determine whether the withholding will actually occur, and must notify the individual of the date on which the withholding is to begin within not more than 30 days after the provision of the advance notice.

The State must have in effect a requirement that the employer of any individual who is subject to withholding must withhold from that individual's wages the amount specified in the notice provided to him by the administering agency. If the State chooses, the employer may withhold an additional amount as a fee to cover the costs to him of the withholding procedure. The notice provided to the employer to effectuate the withholding must contain only the information needed to comply with the court order.

The State must establish methods to simplify the withholding process for employers to the greatest extent possible, including permitting any employer to combine all withheld amounts into a single payment to the appropriate agency or agencies.

As a protection for employees, the bill also specifies that the State must provide for a fine against any employer who discharges, refuses to hire, or otherwise disciplines an individual because of withholding. In addition, the employer must be held liable for the amount he fails to withhold, following the receipt of proper notice.

State law also must make provision for withholding in interstate cases, provide for the priority of support collections under this procedure over any other legal process under State law against the same wages, and make provision for terminating withholding. As is



the case under present law, the State may make income other than wages subject to withholding.

(2) *Liens*.—States will be required to have procedures for imposing liens against real and personal property for amounts of overdue child support owed by a State resident or an individual who owns property in the State. However, States are given discretion to apply this procedure only in cases where they determine it is appropriate.

(3) *State income tax refund offsets*.—States that have State income taxes must provide for the withholding of any State tax refunds payable to a non-custodial parent who owes overdue child support payments. These tax refund withholding procedures must be applicable to AFDC cases and to non-AFDC cases. The withholding procedure must be used for interstate as well as intrastate cases. The State must send the individual prior notice of the proposed offset and information on the procedures to be followed to contest the withholding. The offset procedure must be consistent with the due process procedures of the State.

(4) *Providing information to credit agencies*.—States must make available to consumer credit agencies, at the request of such agencies, information regarding child support arrearages. The State must make available information on arrearages in excess of \$1,000 and may make available information on smaller arrearages. The State must send the absent parent notice prior to the release of such information. The notice provided must indicate the procedures to be followed to contest the proposed release of information. The notification and procedures for contesting the proposed release of information to credit agencies must be in conformance with the due process procedures of the State. The State may charge a fee to the credit agencies who request and receive this information which cannot exceed the cost to the State of providing the information.

(5) *Security or bond in certain cases*.—States will be required to have in place procedures to require in appropriate cases that an individual give security, post a bond, or give some other type of guarantee to secure support obligations of noncustodial parents who have a pattern of not paying timely support. The State must send the individual prior notice, including information on the procedures to be followed to contest the action. Procedures must be in compliance with due process procedures of the State.

(6) *Expedited processes*.—States will be required to have in effect expedited processes within the State judicial system for establishing paternity and obtaining and enforcing child support orders. Decisions or recommendations resulting from the expedited process must be reviewed (i.e., ratified, modified, or remanded) by judges of the court. In addition, appellate review of child support decisions or actions resulting from the expedited processes would be conducted by the regular court system at the request of either party. The Committee recognizes that a variety of procedures are used by different States for establishing and enforcing support. This provision does not mandate a particular procedure nor authorize the Federal agency to impose its views as to the details of State court organization. What is required is that States adopt structures and procedures which will assure that child support and paternity actions are processed in an expeditious manner.

The Secretary's authority to waive required State practices would apply to political subdivisions of States due to variations within States in the effectiveness and timeliness of current processes. Jurisdictions that use administrative processes would qualify for a waiver on the same basis as States or political subdivisions using regular court processes.

*(7) Notification to AFDC recipient of child support collected.*—States are required to notify each AFDC recipient, at least once each year, of the amount of child support collected on behalf of that recipient.

*Exemption authority.*—The Secretary may grant an exemption to a State or political subdivision from the required procedures (other than item 7), subject to later review, if the State can demonstrate that such procedures will not improve the efficiency and effectiveness of the State IV-D program.

*Effective date.*—October 1, 1984. If a State agency administering a plan approved under part D of title IV of the Social Security Act demonstrates, to the satisfaction of the Secretary of Health and Human Services, that it cannot, by reason of State law, comply with the requirements of a provision mentioned above, the Secretary may prescribe that the provision will become effective beginning with the fourth month beginning after the close of the first session of such State's legislature ending on or after October 1, 1984.

## FEE FOR SERVICES

### (Section 6 of the bill)

*Present law.*—States have the option of charging an application fee for furnishing services to non-AFDC families. The fee must be reasonable, as determined under regulations of the Secretary. Currently, the maximum allowable application fee is \$20. (As an alternative, a State may use a fee schedule based on each applicant's income, in which case the schedule is required to be designed so as not to discourage application by those most in need of services.)

In addition, a State may at its option recover costs in excess of the fee. Such recovery may be from either the custodial parent or the absent parent. If a State chooses to make recovery from the custodial parent, it must have in effect a procedure whereby all persons in the State who have authority to order support are informed that such costs are to be collected from the custodial parent.

*Committee amendment.*—States will be required to charge an application fee for non-AFDC cases. The fee may not exceed \$25, but, beginning in fiscal year 1986, the Secretary may adjust the maximum allowable fee amount to reflect changes in administrative costs. The State may charge the fee against the custodial parent or pay the fee out of its own funds. The State may also recover the fee from the absent parent. Additionally, the State may vary the amount of the fee to reflect ability to pay. The Committee believes that this minimal fee requirement represents a reasonable way to help defray some of the costs incurred in processing the application and in providing support enforcement services. This fee would still



be significantly less costly to the non-AFDC applicant than the cost of pursuing support enforcement through a private attorney.

In addition, States must have in effect a law under which a late payment fee is charged to the absent parents of AFDC and non-AFDC families on support that is overdue. The Committee believes that this late payment fee will have the effect of encouraging absent parents to meet their child support obligations fully and on time. In addition, the fee will help to defray the costs of the enforcement services, placing the burden more fairly on the individuals who are delinquent in their obligations, rather than on the taxpayers. The fee will be a uniform amount established by the State equal to 3 to 10 percent of the overdue support owed for months beginning the month following the enactment of this bill. The State may not take any action which would have the effect, directly or indirectly, of reducing the support paid to the child and will collect the fee only after the full amount of the overdue support has been paid to the child. The current law provision for optional State recovery of costs for services to non-AFDC families will remain unchanged.

#### PERIODIC REVIEW OF STATE PROGRAMS; MODIFICATION OF PENALTY

##### (Section 7 of the bill)

*Present law.*—The Director of the Federal Office of Child Support Enforcement is required to conduct an *annual* audit of each State's child support enforcement program to determine whether it complies with the requirements of the Federal statute. If he finds that the State has failed to have an effective program meeting the specified requirements, the Secretary of HHS must reduce the amount of Federal matching payable to the State under the AFDC program by 5 percent. This penalty has never been imposed and legislation has periodically been enacted to suspend its implementation.

*Committee amendment.*—When the Finance Committee recommended the enactment of the child support enforcement program in 1974, it envisioned an aggressive Federal role in assuring that States actually develop strong and effective systems for obtaining the support due to children from their absent parents. The Committee report stated:

"Up to now, the extent of HEW supervision of the child support program in most States has consisted of a perfunctory review of State plan material submitted by the State to see that it contains the statement that there will be a child support program which complies with the law. Under the Committee bill, this paper compliance would no longer suffice."

"HEW would have the duty of performing an annual audit in each State and of making a specific finding each year as to whether or not the child support program as actually operated in that State conforms to the requirements of law and the minimum standards for an effective support program which the bill requires the Department of Health, Education, and Welfare to establish. These audits are to be conducted by the new child support agency which the bill creates within the Department."

Other sections of the Committee amendment require States to adopt several specific procedures for establishing and enforcing support obligations. While these procedures have been found to be effective in a number of States, the success of the program will require more than technical compliance with the new Federal requirements. The Committee bill retains the basic approach of the original legislation under which the Federal Office of Child Support Enforcement is charged with responsibility for monitoring the effectiveness of State programs by establishing standards of performance and auditing State programs to assure that they meet those minimum standards.

Up to the present, the Office of Child Support has not fully implemented the requirements for the establishment of standards of effectiveness but has rather tended to audit for technical compliance with the specific requirements of Federal law. The Committee recognizes that there was a need in the early years of the program to assure that the basic framework was in place in each State and to develop the experience on which reasonable standards of effectiveness could be based. It is the Committee's understanding that the Department is now developing a set of performance standards to be implemented in the near future. While some of those standards may need to be revised in light of this legislation, the Committee wishes to restate emphatically that the law governing the child support program, both before and after the enactment of this bill, does call for the development and use of such standards.

In establishing standards of effectiveness, a reasonable degree of flexibility is essential. Based on the experience in the program to date, it should be possible to set standards which represent minimum acceptable levels of success in carrying out the various objectives of the child support program. As additional experience is gained and as the program matures, these standards should be modified to reflect the increasing capacity of the States to meet the goals of the program.

While the ability of an agency to minimize unnecessary costs is always a valid element in judging its efficiency, that is only one of a number of important measures of performance. The Committee does not intend that its endorsement of performance standards should be seen as sanctioning a simple short-term cost-effectiveness approach which would discourage States from serving clients with more difficult and costly problems or from devoting resources to such elements as paternity determination which may involve high initial costs.

The Committee believes that the Department should be developing performance measures which will enable the auditors of the Federal Office of Child Support to determine whether States are effectively attaining each of the important objectives of the program. These objectives are clearly set forth in the law and include locating absent parents, establishing paternity, obtaining and collecting on support orders, cooperating with interstate support and paternity actions, and providing services for both welfare and non-welfare families. It should, for example, be possible to establish guidelines to identify situations in which, on average, the promptness or success rate in responding to interstate enforcement requests falls below minimally acceptable levels of performance. The Committee



recognizes that the development and use of such standards is a significant administrative task which cannot be accomplished instantly. The mandate for carrying out this task has, however, been in the law for nearly ten years. In recommending the current legislation, the Committee is not abandoning these requirements of existing law but rather expects them to be more fully carried out.

One barrier to the full implementation of existing law has been the inflexibility of its penalty structure. Present law calls for a flat penalty—loss of 5 percent of AFDC funds—for any year in which a State fails the annual Federal audit in any respect. Application of this penalty has been repeatedly suspended by legislation on the basis that failure to suspend the penalty would penalize some States which actually had effective programs or which had made strong efforts to remedy the non-compliance.

The Committee amendment modifies the penalty provisions in several respects. First, the initial penalty level would be reduced from 5 percent of AFDC funds to at least 1 percent but no more than 2 percent of AFDC funds. If the penalty had to be applied for more than one year, the penalty would rise to 2 percent up to 3 percent in the second year, and 3 percent up to 5 percent in succeeding years. Second, unlike present law, which requires a penalty in every case where the audit discloses any area of non-compliance, the Committee amendment would allow the penalty to be waived if the Administrator finds that the noncompliance is not substantial and has no significant adverse impact on the effectiveness of the State's program. In addition, the Committee amendment would allow for a suspension and possible waiver of the penalty even if there is substantial noncompliance or failure to have an effective program, provided that the State demonstrates to the satisfaction of the Secretary that it has undertaken and is satisfactorily pursuing a corrective action plan which will remedy the problem within a reasonable period of time.

With these changes, the Committee believes that the audit and penalty provisions of the law should become a powerful tool for Federal oversight aimed at increasing the level of effectiveness of the child support enforcement program. The Committee believes that the audits should thoroughly examine the State programs and their effectiveness and therefore provides for a revised audit schedule on a triennial rather than annual basis. However, annual audits are to be conducted for any State found not to have a program in substantial compliance with Federal requirements and standards of effectiveness. This provision is effective on October 1, 1983.

In view of the changes proposed in the Committee amendment, the penalty provisions of the law will apply only in cases where States not only fail substantially to carry out the requirements of law but also refuse to undertake the necessary changes to correct that situation. For this reason, the Committee cannot foresee any situation in which legislative action to suspend these revised penalties would be appropriate. Accordingly, the Committee would expect to oppose any such efforts to enact waiver legislation.

## SPECIAL PROJECT GRANTS TO PROMOTE IMPROVEMENT IN INTERSTATE ENFORCEMENT

(Section 8 of the bill)

*Present law.*—States are eligible to receive Federal matching funds for interstate cases on the same basis as for intrastate cases. There is no special provision for funding of interstate activities.

*Committee amendment.*—The Committee recognizes that enforcement of interstate cases is one of the most difficult areas of child support enforcement. The time and skills which staff must dedicate to interstate cases are often far in excess of what is needed for cases when both parents reside within the State. To encourage States to develop efficient and effective ways of handling interstate cases, the Committee has included in its bill a provision to allow the Secretary to make demonstration grants to States which propose to undertake new or innovative methods of support collection in such cases. The Secretary may make a grant only upon a finding that the project involved is likely to be of significant assistance in carrying out the purpose of the demonstration program. Waivers may be granted if necessary to carry out the demonstration. In addition, it is expected that the Secretary will exercise discretion in making grants so as to assure that the States which receive them will use them to augment and improve existing State efforts to pursue and respond to interstate cases. The new funds authorized by the bill are not to be used to supplant current State and local funding efforts. The grant amount is not to be considered a State expenditure that is matchable.

In fiscal year 1985, \$5 million is authorized for interstate grants. In 1986, the amount authorized is \$10 million. Beginning in 1987, the annual amount authorized for the grants will be \$15 million.

## EXTENSION OF SECTION 1115 DEMONSTRATION AUTHORITY TO THE CHILD SUPPORT PROGRAM

(Section 9 of the bill)

*Present law.*—Sec. 1115 of the Social Security Act authorizes the Secretary to grant waivers to States in the operation of their AFDC and medicaid programs, if he determines that the waivers are necessary to enable the States to conduct experimental, pilot, or demonstration projects which are likely to assist in promoting the objectives of the programs.

*Committee amendment.*—The sec. 1115 demonstration authority is expanded to include the child support enforcement program under the following conditions: (a) the intent of the requested waiver must be to test modifications that will improve the financial well-being of children, or otherwise improve the operation of the program; (b) a waiver will not be allowed for any modification that would disadvantage children in need of support; and (c) the requested waiver will not result in an increase in Federal AFDC costs.

The Committee believes that the waiver authority which the Secretary now has to allow demonstration activities in the AFDC and medicaid programs has been useful in enabling and encouraging



States to undertake innovative efforts to improve their programs. The Committee believes that this authority will be equally useful for the child support program.

The provision is effective upon enactment.

#### MODIFICATION IN CONTENT OF ANNUAL REPORT BY THE SECRETARY

(Section 10 of the bill)

*Present law.*—Within three months after the end of each fiscal year, the Secretary must submit an annual report to Congress on child support program activities. The statute specifies certain data which must be included in the report.

*Committee amendment.*—The Committee believes that both the States and the Congress will be better able to evaluate the progress of the child support program if more detailed statistical information is made available than is now the case. At present, for example, there is no information available on child support enforcement activities made on behalf of families involved in interstate enforcement. There is also no information available on how much is being spent on the establishment of paternity, or the cost per case of this kind of activity. The Committee amendment therefore modifies the present reporting requirements to require the following information by State:

(1) the total number of cases in which a support obligation has been established in the past year and the total amount of such obligations for these cases;

(2) the total number of cases in which a support obligation has been established and the total amount of such obligations for these cases;

(3) those cases described in (1) in which support was collected during such fiscal year and the total amount of such collections; and

(4) those cases described in (2) in which support was collected during such fiscal year and total amount of such collections.

Additionally, the annual report must include information on the child support cases filed and the collections made in each State on behalf of children residing in another State or cases against parents residing in another State.

Finally, the annual report must detail how much in administrative costs is spent in each functional category (including paternity) of expenditures.

This provision is effective for reports issued for fiscal year 1986 and years thereafter. The information is to be separately stated for current and for past AFDC cases and for non-AFDC cases.

#### CHILD SUPPORT ENFORCEMENT FOR CERTAIN CHILDREN IN FOSTER CARE

(Section 11 of the bill)

*Present law.*—The Federal statute does not require State child support agencies to undertake collection of child support on behalf of children who are placed in foster care under title IV-E of the Social Security Act. In addition, there is no requirement that State

foster care agencies attempt to secure an assignment to the State of rights to support on behalf of children receiving foster care maintenance payments under the IV-E foster care program. These requirements were deleted when the foster care program was transferred from title IV-A to title IV-E by the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272).

*Committee amendment.*—Under the Committee amendment, State child support agencies are required to undertake child support collections on behalf of children receiving foster care maintenance payments under title IV-E, if an assignment of rights to support to the State has been secured by the foster care agency. In addition, State foster care agencies are required to take steps, where appropriate, to secure an assignment to the State of any rights to support on behalf of a child receiving foster care maintenance payments under the title IV-E foster care program. The child support collections would be credited to the State as AFDC collections for purposes of determining the State's incentive payments. The Committee understands that many States have continued to administer the law as it existed prior to the 1980 amendments, even though there was no specific requirement in the law. In reinstituting the requirements, the Committee is attempting to assure equity in State activities with respect to children in foster care.

The provision is effective upon enactment.

#### CONTINUATION OF SUPPORT ENFORCEMENT FOR AFDC RECIPIENTS WHOSE BENEFITS ARE BEING TERMINATED

(Section 12 of the bill)

*Present law.*—Apart from the general requirement of serving non-welfare families, there is no requirement that States continue support collection activities on behalf of families when they lose eligibility for AFDC. In some States, collection efforts on behalf of such families are immediately terminated. In others, collection efforts continue only for a few months.

*Committee amendment.*—States must provide that families whose eligibility for AFDC is terminated due to the receipt of (or an increase in) child support payments will be automatically transferred from AFDC to non-AFDC status under the IV-D program, without requiring application for IV-D services. The State child support agency must provide these families with the same services that are provided to other non-AFDC families. The Committee believes that it is particularly important that these families who are in transition from welfare to non-welfare status have the security of knowing that their child support payments will continue. Child support enforcement on behalf of these families may be crucial in enabling them to retain their economic independence.

The provision is effective October 1, 1984.

## INCREASED AVAILABILITY OF FEDERAL PARENT LOCATOR SERVICES TO STATE AGENCIES

(Section 13 of the bill)

*Present law.*—Federal law requires operation by the Federal Government of a Parent Locator Service (PLS) to assist States in locating absent parents. States may use the Federal PLS only after there has been a determination that the absent parent cannot be located through procedures under the control of the State child support agency.

*Committee amendment.*—The Committee is proposing to repeal the requirement that the States exhaust all State child support locator resources before they request the assistance of the Federal PLS in locating absent parents. The Committee believes that States should be able to use all available location resources without delay, to assure that the enforcement process may be undertaken as expeditiously as possible.

The provision is effective upon enactment.

## AVAILABILITY OF SOCIAL SECURITY NUMBERS FOR PURPOSES OF CHILD SUPPORT ENFORCEMENT

(Section 14 of the bill)

*Present law.*—Child support agencies have access to certain types of information through the Federal Parent Locator Service and the Internal Revenue Service. The Secretary of HHS, through the Parent Locator Service, is authorized to furnish the agencies with the most recent address and place of employment of absent parents. The Secretary of the Treasury is authorized to release certain wage, income tax, and return information to Federal, State and local child support enforcement agencies if needed by such agencies for purposes of the child support enforcement program. Neither Secretary is authorized to release the absent parent's social security number.

*Committee amendment.*—Under the Committee amendment, the absent parent's social security number will be disclosed to child support agencies both through the Parent Locator Service and by the Secretary of the Treasury. The social security number has been found to be an extremely useful tool in enabling child support agencies to locate absent parents through cross-checking with other sources of information.

The provision is effective upon enactment.

## LIMITATION ON DISCHARGE IN BANKRUPTCY OF CHILD SUPPORT OBLIGATIONS

(Section 15 of the bill)

*Present law.*—In general, the Bankruptcy Act does not allow discharge in bankruptcy from any debt to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, if it is in connection with a separation, divorce decree, or property settlement agreement. However, support obligations that are assigned generally may be discharged, unless



they are assigned to the State in connection with the collection of support by the IV-D agency on behalf of an AFDC recipient. In addition, a support obligation arising from a paternity determination is usually not protected from discharge in bankruptcy because it does not meet the requirement that it be in connection with a separation, divorce decree, or property settlement agreement.

*Committee amendment.*—It has come to the attention of the Committee that in at least one State the IV-D agency is required by State statute to accept assignment to the State of support obligations that it undertakes to enforce on behalf of non-AFDC families. Because the Bankruptcy Act currently allows discharge in bankruptcy in the case of assignment, except for assignment to the State on behalf of AFDC families, a non-AFDC family that chooses to use the IV-D enforcement services in that State runs the risk that all support rights due it may be discharged in bankruptcy. The Committee amendment would eliminate this risk to the use of IV-D services by amending the Bankruptcy Act to provide that obligations that have been assigned to the State as part of the IV-D enforcement process may not be discharged in bankruptcy, regardless of whether they are on behalf of an AFDC family or a non-AFDC family. In addition, the amendment would provide protection against discharge in cases where support is established on the basis of a paternity determination.

The provision is effective upon enactment.

## COLLECTION OF PAST-DUE SUPPORT FROM FEDERAL TAX REFUNDS

### (Section 16 of the bill)

*Present law.*—Upon receiving notice from a State child support agency that an individual owes past-due support which has been assigned to the State as a condition of AFDC eligibility, the Secretary of the Treasury is required to withhold from any tax refunds due that individual an amount equal to any past-due support. The withheld amount is sent to the State agency, together with notice of the taxpayer's current address. The Secretary of the Treasury is required to issue regulations, approved by the Secretary of Health and Human Services, prescribing the timing and contents of notices by the States. States are required to reimburse the Federal Government for the cost of the procedure. "Past-due support" is defined as the amount of a delinquency determined under court order or order of an administrative process established under State law for support and maintenance of a child, or a child and the parent with whom the child is living. Under present procedures, the State agency, or, at the option of the State, the Federal Office of Child Support Enforcement, must give an individual prior notice that the offset will occur, and the individual may contest the action with the State agency. In addition, the Internal Revenue Service must provide the taxpayer with a notice, concurrent with the offset, of the amount of the offset and of the State to which it has been paid.

*Committee amendment.*—The present system for withholding past-due support from Federal tax refunds is made available for non-AFDC children as well. State child support agencies will be required to submit to the IRS for withholding the names of absent



parents who owe past-due support to whom the withholding procedures may be applied. These must be limited to cases where there are arrearages of \$500 or more, and which, on the basis of current payment patterns and the enforcement efforts that have been made, the State agency determines are unlikely to be paid before the offset occurs. In addition, States may limit arrearages which they submit to the IRS to amounts that have accrued since the State undertook to collect support for the non-AFDC family.

Once a State agency has determined that the name of an absent parent will be submitted to the IRS, it must send notice to that absent parent of the proposed offset, including the procedures to be followed in contesting the proposed offset. The notice must also inform the absent parent and his spouse, if any, of the procedures which may be taken to protect the unobligated spouse's portion of the refund.

If, on the basis of the information provided by the State child support agency (through the Department of Health and Human Services), the IRS determines that an income tax refund must be withheld to pay past-due support, the IRS must provide the taxpayer with notice, concurrent with offset, of the amount of the offset and of the State to which it has been paid so that any questions which the taxpayer may have about the child support obligation may be addressed to the appropriate State child support agency. The IRS notice must also inform the taxpayer that, in the case of a joint return where both spouses had income, the spouse who is not liable for the past-due obligation may file an amended tax form to recover the unobligated spouse's portion of the amount that was withheld. If the unobligated spouse subsequently files an amended return to secure his or her proper share of a refund, the IRS must pay that share to the individual.

As in the current procedure, amounts of refunds withheld by the IRS will be sent to the State child support agency that submitted the name for offset, so that they can in turn be paid to the family that is owed past-due support. It is expected that generally the State agency will make prompt payment to the families involved. However, if the IRS informs the State agency that the absent parent has filed a joint return, and therefore the possibility exists that the unobligated spouse may file an amended return to claim his or her share of the return, the State agency will be authorized to delay payment to the family that is owed past-due support for a period of up to six months or (if earlier), until the unobligated spouse has been paid the proper share of the refund. This will allow the State to keep sufficient funds on hand to reimburse the IRS for any claims that the IRS must pay to those unobligated spouses who file amended returns.

The IRS may charge the State a fee of up to \$25 for processing each non-AFDC case submitted. The State may in turn require that a \$25 fee be paid by the family requesting offset. This user fee is intended to be used to defray costs incurred by the IRS and the State in processing the non-AFDC cases and in meeting the notice requirements.

The amendment is effective for refunds paid after December 31, 1985.

## GUIDELINES FOR CHILD SUPPORT AWARDS

## (Section 17 of the bill)

*Present law.*—Federal law requires States to have effective programs for establishing paternity, securing court orders for child support, and enforcing those orders. The law does not, however, address itself to the adequacy or reasonableness of the amount of support called for by these court orders. This is left entirely to the discretion of each State and its courts.

*Committee amendment.*—Although the child support enforcement program has greatly strengthened the ability of children to have support orders established and collected, there remains a continuing problem that the amounts of support ordered are in many cases unrealistic. This frequently results in awards which are much lower than what is needed to provide reasonable funds for the needs of the child in the light of the absent parent's ability to pay. In some instances, however, there are also awards which are unrealistically high.

Some States have established guidelines to be used by the courts in setting the amount of child support orders. Where these guidelines exist, overall award levels tend to be somewhat higher than where the amount of the order is entirely discretionary with each judge. Moreover, the existence of guidelines tends to assure that there is reasonable consideration given both to the needs of the child and the ability of the absent parent to pay. This provides some protection for both parties.

The Committee amendment requires each State to develop a set of guidelines to be considered by judges and others authorized to order support in the State in determining support orders. The development of such guidelines will necessarily require States to devote some study to what is appropriate and to review what other States have done. For this reason, the amendment allows two full years (until October 1986) for States to develop the guidelines. The exact nature of the guidelines will be determined by each State and may be established by law or by a judicial conference or other mechanism as may be appropriate in that State.

The Committee recognizes that the development of a court order is a complex determination requiring the consideration of many aspects of the individual circumstances of the parties involved, and that there may be a need for courts to have the flexibility to exercise discretion. For this reason, the amendment leaves to each State the decision as to how these guidelines are to be considered. It is the view of the Committee, however, that the very existence of a set of guidelines in each State will tend to improve the reasonableness and equity with which support orders are established. The Federal Office of Child Support Enforcement is directed to maintain information about State guidelines and to provide a source of technical assistance and information exchange among States on this topic.

## WISCONSIN CHILD SUPPORT INITIATIVE

(Section 18 of the bill)

*Present law.*—Although the Social Security Act allows the Secretary to waive certain requirements of the AFDC program for purposes of demonstration programs, there is no authority broad enough to allow a State to substantially restructure its AFDC and child support programs.

*Committee amendment.*—The State of Wisconsin has informed the Committee that it wishes to undertake a new child support initiative, which it believes will strengthen its programs on behalf of children. In order to allow the State to proceed with its initiative, the Committee amendment requires the Secretary of HHS to waive requirements of the AFDC and child support programs under specified conditions. The State may test its initiative in any county or counties, or throughout the State.

To qualify for waiver, the State must provide a complete description of the program which it will operate in place of the AFDC and child support programs, and make the description readily available to the public throughout the State. The Governor must provide assurances that, under the initiative, assistance will be provided to all children in need of financial support, and the State will continue to operate an effective child support enforcement program.

In addition, the State must agree that, during the period of the test, it will continue to determine eligibility for medical assistance under the State plan approved under title XIX of the Social Security Act, applying the criteria (insofar as may be applicable to members of families with dependent children affected by the initiative) in effect under its AFDC State plan approved for the month preceding the month in which the initiative becomes effective, except that the criteria shall be considered to have been changed to the extent necessary to comply with future changes in Federal law or regulations.

The State must specify measurable performance objectives, submit an evaluation plan, and agree to submit interim and final evaluations and reports, as the Secretary may require. In addition, the State must agree to obtain, at least once every two years, a financial and compliance audit of the funds it receives under this provision, and to obtain, after the initiative is ended, a final audit which must be made public.

The State's proposal must describe in detail how the initiative will affect children and families, with specific reference to the principles for calculating benefits and establishing and enforcing child support obligations. The description must also include estimates of cost and program effects and provide other relevant information necessary for the Secretary to determine whether the financial well-being of children and their families will be adversely affected by the initiative.

In general, the Federal payment which Wisconsin will be eligible to receive to operate its initiative will be equal to the State's proportionate share of the amount paid to all States for (1) AFDC benefit costs, (2) AFDC administrative costs, (3) child support administrative costs, and (4) child support incentive payments. The



State's proportionate share of each amount listed above shall be the portion of such amount that bears the same ratio to such amount as the corresponding amount advanced to the State for quarters in fiscal years 1984 through 1986 bears to the total corresponding amount advanced to all other States for such quarters.

The initiative proposed by the State and the related requested waivers will become effective within 120 days after its submission unless the Secretary determines that the financial well-being of children in the State will be adversely affected by the initiative. The Secretary must notify the State that, effective with the beginning of the following quarter (or later at the option of the State) the State may operate its initiative instead of its AFDC or child support programs in the areas designated by the State.

The State may cease the initiative and return to the administration of the regular AFDC and child support programs upon provision to the Secretary of at least 3 months notice. The Secretary may terminate approval of the initiative upon the giving of 3 months advance notice to the State if it is determined that the financial well-being of children in the areas where the initiative is in effect would be better achieved by operating the regular AFDC and child support programs.

The provision is in effect for quarters beginning after September 30, 1986, and ending before October 1, 1994.

#### SENSE OF THE CONGRESS LANGUAGE WITH RESPECT TO CHILD SUPPORT, CHILD CUSTODY, VISITATION RIGHTS, AND OTHER RELATED DOMESTIC ISSUES

##### (Section 19 of the bill)

The Committee amendment incorporates Senate Concurrent Resolution 84, which makes certain findings with respect to child support enforcement, and sets forth as the sense of the Congress that—

(1) State and local governments must focus on the vital issues of child support, child custody, visitation rights, and other related domestic issues that are properly within the jurisdictions of such governments;

(2) all individuals involved in the domestic relations process should recognize the seriousness of these matters to the health and welfare of our nation's children and assign them the highest priority; and

(3) a mutual recognition of the needs of all parties involved in divorce actions will greatly enhance the health and welfare of America's children and families.

It is the Committee's view that these issues are of the highest importance to the well-being of children in all the States. Greater emphasis must be placed on the fair establishment and enforcement of visitation rights.

#### IV. Regulatory Impact

In compliance with paragraph 11(b) of rule XXVI of the standing rules of the Senate, the following evaluation is made of the regulatory impact which would be incurred in carrying out the bill:



The individuals most directly affected by any regulatory impact of this bill would be absent parents who have failed to provide the support payments properly due to their children. These individuals would, under the bill, be subject to having child support payments deducted from their paychecks or from State or Federal income tax refunds due them. They also would in some circumstances be subject to requirements for posting security bonds or having their property subjected to liens. There would also be a corresponding beneficial impact on the families of such individuals in that they would, as a result of the bill, receive support payments to which they are entitled. The Committee is unable to estimate the number of individuals who will be so affected because the procedures which the bill provides for will not, on a mandatory basis, be applied except where the absent parent is delinquent in meeting his obligations. A recent Census study showed that of the 8.4 million households of women with children of an absent father, 5 million had been awarded support and 1.9 million had received the full amount of support due. This would seem to indicate a potential impact of the procedures of this bill on up to 6 million absent parents and their families. The Committee would anticipate, however, that the very existence of the procedures provided for by this legislation would greatly increase the degree of voluntary compliance so that the procedures would actually have to be applied in far fewer instances.

The bill will also have a regulatory impact on employers who will be required to withhold child support payments from the wages of delinquent parents and perform related accounting activities. The bill also regulates such employers by prohibiting them from discharging or otherwise disciplining employees whose wages become subject to withholding under the bill. Again, the number of employers who will actually be required to implement withholding cannot be determined both because there are no available data as to the distribution among employers of employees who have child support delinquency and because the bill will have an as yet undetermined impact on voluntary compliance. All employers will have some regulatory impact to the extent that they may find it necessary to become familiar with the withholding procedures and, in many cases at least, to make appropriate modifications in their accounting systems to enable them to comply with any withholding orders.

The bill attempts to minimize the potential regulatory and economic impacts on employers by authorizing States to allow employers to also withhold an appropriate fee from employees with withholding orders to cover the processing costs. In addition the bill provides that States, insofar as feasible, should design their withholding requirements with a view to reducing the burden placed on employers.

The implementation of the procedures required by the bill will involve some additional paperwork burden on individuals and employers, particularly in the implementation of the income withholding provisions. The extent of this burden, however, will vary depending on such factors as the exact design of the State withholding system and the degree to which the employer and the State have computerized their accounting systems. Again, the bill at-

tempts to encourage a reduction in paperwork by expanding somewhat the existing favorable Federal matching for States to computerize their operations.

There are several provisions in the bill which have some impact on privacy. The bill requires that information concerning child support delinquencies be made available in certain circumstances to consumer credit reporting agencies. It also provides readier access to the Federal Parent Locator Service by child support agencies and authorizes the release to such agencies of information in Federal records concerning the social security number of absent parents. In the view of the Committee, the important objective of securing the support owed by absent parents to their children amply justifies the release of this information. In the case of the reporting of delinquencies to consumer credit organizations the bill includes safeguards to assure that the affected individuals have an opportunity to dispute the accuracy of such reports.

### V. Budgetary Impact

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, D.C., March 27, 1984.

Hon. ROBERT J. DOLE,  
*Chairman, Committee on Finance,*  
*U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for the Child Support Enforcement Amendments of 1984, amendments in the nature of a substitute for H.R. 4325, as ordered reported by the Senate Finance Committee on March 23, 1984.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ERIC HANUSHEK  
(For Rudolph G. Penner).

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: Amendments in the nature of a substitute for H.R. 4325.
2. Bill title: Child Support Enforcement Amendments of 1984.
3. Bill status: As ordered reported by the Senate Finance Committee on March 23, 1984.
4. Bill purpose: To amend part D of Title IV of the Social Security Act to reform the Child Support Enforcement program.
5. Estimated cost to the Federal Government: The estimated costs of these amendments to the Federal Government are shown in Table 1. These estimates assume an enactment date of May 1, 1984. Legislative language for many of the provisions was not available at the time CBO's cost estimate was completed.

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF CHILD SUPPORT ENFORCEMENT AMENDMENTS

[By fiscal year, in millions of dollars]

	1984	1985	1986	1987	1988	1989
Direct spending:						
Function 600:						
Budget authority.....		55	30	35	5	-5
Outlays.....		55	30	35	5	-5
Amounts subject to appropriation action:						
Function 600:						
Authorizations.....		5	10	15	15	15
Outlays.....		5	10	15	15	15
Total:						
Budget authority/authorizations.....		60	40	50	20	10
Outlays.....		60	40	50	20	10

Basis for estimate: These amendments would reform the Child Support Enforcement (CSE) program in a variety of ways. Among these reforms, the most important with respect to budgetary effects would be changing incentive payments to States, authorizing \$5 to \$15 million annually for the funding of special projects on interstate cases, mandating States to utilize certain enforcement techniques, requiring offsets against Federal and State income tax refunds for past-due support owed to non-AFDC families, reducing the Federal financing share, and requiring States to charge fees. Estimated budgetary effects of these reforms are very uncertain; hard data or reliable analyses and research on which estimates could be based are unavailable. Moreover, CSE programs vary considerably among States and localities so that national estimates are difficult, particularly since States and localities may react quite differently to legislative changes.

Table 2 shows CBO's federal outlay estimates for the major provisions with budgetary effects. A description of the methodology used for the estimates follows.

TABLE 2.—ESTIMATED OUTLAYS FROM THE MAJOR PROVISIONS OF CHILD SUPPORT ENFORCEMENT AMENDMENTS

[By fiscal year, in millions of dollars]

Provision	1984	1985	1986	1987	1988	1989
Changing incentive payment.....			15	15	15	15
Authorizing funds for interstate projects.....		5	10	15	15	15
Mandating State enforcement techniques.....		-15	-40	-40	-45	-45
Requiring offsets against income tax refunds for non-AFDC families.....		65	50	50	35	35
Reducing Federal financing share.....				-10	-25	-35
Requiring fees.....		-5	-15	-15	-20	-20
Other.....		5	10	10	5	( <sup>1</sup> )
Impact on CSE case levels:						
CSE expenditures.....		10	30	55	90	100
Offsetting effects on public assistance.....		-5	-20	-30	-50	-55
Total outlays.....		60	40	50	20	10

<sup>1</sup> Less than \$500,000.

*Changing incentive payment.*—The current Federal incentive payment to States and localities to help finance the CSE program is equal to 12 percent of collections made on behalf of AFDC fami-



lies. These amendments would repeal this incentive payment on October 1, 1985 and would institute new incentives. The new incentives would be equal to 6 percent of AFDC collections and 6 percent of non-AFDC collections, each rising to 10 percent on a sliding scale depending on the ratio of collections to total administrative costs. The incentive paid on non-AFDC collections would be capped at 100 percent of the incentive paid on AFDC collections. In fiscal years 1986 and 1987, the States would receive no less than 80 percent of what they would have received under current law.

CBO estimates that the new incentives would add \$15 million a year to outlays beginning in 1986. These estimates are based on State-by-State projections of CSE collections and costs consistent with total program collections and costs as estimated in CBO's baseline projections.

*Authorizing funds for interstate projects.*—Authorizations of \$5 million in 1985, \$10 million in 1986, and \$15 million a year thereafter would be provided for projects on interstate collection of child support. CBO assumes full appropriation of the authorized amounts. Moreover, the estimate of outlays assumes full spending of the authorized levels in each fiscal year.

*Mandating State enforcement techniques.*—The amendments would require States to adopt by October 1, 1984 several enforcement techniques that are currently optional with the States. CBO estimates that this provision would reduce outlays \$15 million in 1985, \$40 million a year in 1986 and 1987, and \$45 million a year in 1988 and 1989.

The most important technique that would be mandated is wage withholding, which is the payment of support by an employer from the wages of the absent parent. The bill would require withholding when past due support equals one month's support payment. There are no reliable analyses of the effect of wage withholding on child support collections or expenditures. The CBO estimate assumes that such collections would rise 10 percent as a result of wage withholding in the States not currently using withholding. Further, it is assumed that administrative costs would decline by 5 percent as a result of wage withholding because overdue support with its attendant court and other costs would be reduced. Resulting reductions in Federal outlays are estimated to be \$15 million in 1985, \$30 million a year in 1986 and 1987, and \$35 million a year in 1988 and 1989.

Other mandated enforcement techniques include withholding from State income tax refunds of support to AFDC families that is past due, procedures for imposing liens against real and personal property for amounts of past-due support, imposing guarantees or bonds to secure support from absent parents with a pattern of past-due support, reporting of past-due support to credit agencies at their request, and requiring quasi-judicial procedures. CBO estimates that outlays would be reduced by \$10 million a year beginning in 1986 as a result of these mandatory enforcement techniques, based on Administration estimates.

*Requiring offsets against income tax refunds for non-AFDC families.*—This provision would require that past-due support owed to non-AFDC children by absent parents be taken from the parents' Federal and State income tax refunds, beginning with 1985 tax



payments. Current law already requires such offsets against Federal income tax refunds for AFDC children. The budgetary effects of this provision are very uncertain; either net savings or net costs are possible. CBO's estimate shows costs of \$65 million in fiscal year 1985, declining to \$35 million by 1989.

Costs associated with the Federal refund offset include processing costs of the State and local CSE agencies and Internal Revenue Service (IRS) costs. Together, these costs total about \$25 million a year. The most uncertain—and potentially largest—costs are for administrative or court hearings if the absent parent contests the offset. Two States that currently use State income tax offsets for non-AFDC families—Iowa and Wisconsin—have few hearings. But the need for hearings depends on each State's laws, and some States believe that the tax offset provisions will require a large number of hearings. CBO's estimate assumes that administrative hearings would be required in 25 percent of the new cases and 12½ percent of the old cases, and that court hearings would be required in 15 percent of the new cases and 7½ percent of the old cases. Costs of a hearing are estimated to be \$125 if administrative and \$450 if in court. Costs to the Federal Government of these hearings would total \$50 to \$60 million a year.

The IRS would be allowed to charge States up to \$25 a case to cover its costs, and States could in turn charge the non-AFDC family. CBO's estimate assumes that 25 percent of States would charge the family, raising \$5 million in revenues each year.

Costs of implementing this provision would be partially offset by reduced public assistance expenditures on the families who receive the refund offset. CBO's estimate assumes that 800,000 cases in 1985, rising to 1,500,000 cases by 1989, would be involved in the offset program. Based on results of the AFDC offset program, it is assumed that 45 percent of the cases would receive an average \$525 in offset child support. In total, added child support collections would be \$190 million in 1986, rising to \$350 million in 1989. Reduced public assistance expenditures are assumed to be 10 percent of the added child support collections, amount to \$20 million in 1986 and \$35 million in 1989. (The basis for the 10 percent estimate is discussed below.)

No added costs or savings are shown for the State refund offset provision. There would be few costs in addition to those for the Federal offset. One hearing would suffice for both the State and Federal offset. Only for an absent parent with a State tax refund but no Federal refund might there be added costs, and then only if a hearing is requested after the parent is notified of the offset amount. Such potential costs cannot be estimated because data on overlaps between Federal and State refunds for a single family are not available. There would be added costs for the State tax collection agencies, but these costs could well be offset by the reduced public assistance expenditures resulting from the added child support collections.

*Reducing Federal financing share.*—The Federal Government currently pays 70 percent of state and local government administrative costs for the CSE program. This bill would reduce the Federal share by one percentage point a year for five years beginning in 1987. The Federal share would be 69 percent in fiscal year 1987,

67 percent in 1989, and 65 percent in 1991. CBO's estimated savings for this provision are \$10 million in 1987, \$25 million in 1988, and \$35 million in 1989.

*Requiring fees.*—States may currently charge fees to non-AFDC families, but few do. These amendments would require an application fee, not to exceed \$25, be charged to non-AFDC families. A State could pay the fee out of its own funds or recover it from absent parents. In addition, States would be required to have in effect a law under which a late payment fee is charged to absent parents of AFDC and non-AFDC children. This fee would be 3 percent to 10 percent of the past-due support.

CBO estimates total savings from this provision to rise from \$5 million in 1985 to \$20 million in 1989. Most of these savings are from the application fee, which is assumed to average \$15. Late payment fees are estimated to save only \$5 million a year. States have difficulty collecting fees from absent parents, and many argue that it is not cost effective to do so. The CBO estimate assumes that a 3 percent fee is collected for one-quarter of the absent parents who owe support.

*Other.*—Several provisions would be likely to result in added outlays by the States for automatic data processing (ADP) systems, which are subject to a Federal match of 90 percent. The amendments would permit the use of these funds for systems that would improve wage withholding and for the acquisition of computer hardware. CBO estimates that Federal outlays would rise by \$5 to \$10 million a year through fiscal year 1988 with the need for, and acquisition of, more ADP systems.

These amendments have many other provisions that are not discussed here. They are estimated to have insignificant effects on outlays.

*Impact on CSE case levels.*—The intent of these amendments is to improve the effectiveness of the CSE program with respect to increasing child support collections, particularly for non-AFDC families. A number of the provisions are likely to bring more non-AFDC families into the CSE program than would have occurred without this legislation. It is, of course, impossible to know how many such new families would come into the program. The CBO estimate assumes that of the potential CSE families not expected to use the program under current law, 5 percent would come onto the program as a result of these amendments in 1985 and 20 percent would come on by 1989. The resultant numbers of new CSE families total 100,000 in 1985 and 660,000 by 1989. The CSE cost of servicing each of these new families is estimated to be \$176 a year in 1985, rising to \$214 by 1989. Given the Federal financing share, Federal outlays are estimated to rise as a result of these new cases by about \$10 million in 1985 and \$100 million by 1989.

These added outlays would be partially offset by reduced public assistance expenditures on these families as a result of increased child support collections. There are no reliable studies of the reduced public assistance costs that result from increases in child support collections for non-AFDC families. However, one recent study based on a few counties did report that 25 percent of non-AFDC cases received public assistance during the first year after their cases were opened and that \$500 less a year in public assist-



ance was received for each case in which child support was paid. Based on these findings, the study estimated that public assistance savings (Federal plus State) in fiscal year 1981 were about \$55 million. This represented 5.7 percent of non-AFDC collections and comparable savings to the Federal Government alone were 4.4 percent of collections. These estimated savings are too low, primarily because Medicaid was not included.

The CBO estimates consequently assume that reduced Federal public assistance expenditures would equal 10 percent of the added collections for the new CSE families. Collections are assumed to rise by the same percentages as cases rise. The added collections are estimated to total \$75 million in 1985 and \$530 million in 1989. The Federal shares of the reduced public assistance expenditures are then estimated to be about \$5 million in 1985 and \$55 million in 1989.

6. Estimated cost to State and local governments: Most of the bill's provisions that would affect Federal outlays would also change State and local government expenditures. The table shows these changes by provision, and they are discussed, in turn, below.

The altered incentives would provide States and localities with \$15 million in added funds annually beginning in 1986. This would equal the cost of the altered incentives to the Federal Government.

The authorization of funds for interstate projects should not alter significantly the States' budgetary situation because Congressional intent is that these funds should be used only to augment and improve existing State efforts. However, there might be some substitution of these funds for current and planned State efforts in interstate collections.

Mandating State enforcement techniques would increase child support collections on behalf of AFDC families, reducing their AFDC benefits dollar for dollar. The States' share of these reduced benefits is 46 percent and States would also receive incentive payments for the added collections. As a result, State expenditures would be reduced by \$20 million a year in 1985, \$55 million in 1986 and 1987, and \$60 million in 1988 and 1989.

TABLE 3.—ESTIMATED CHANGES IN STATE AND LOCAL EXPENDITURES

[By fiscal year, in millions of dollars]

Provision	1984	1985	1986	1987	1988	1989
Changing incentive payment.....			-15	-15	-15	-15
Authorizing funds for interstate projects.....		( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
Mandating State enforcement techniques.....		-20	-55	-55	-60	-60
Requiring offsets against income tax refunds for non-AFDC families.....		30	15	15	10	10
Reducing Federal financing share.....				10	25	35
Requiring fees.....		-3	-5	-5	-10	-10
Other.....		( <sup>1</sup> )	1	1	1	( <sup>1</sup> )
Impact on CSE case levels:						
CSE expenditures.....		5	15	25	40	45
Offsetting effects on public assistance.....		-5	-15	-20	-30	-35
Total.....		7	-59	-44	-39	-30

<sup>1</sup> Less than \$500,000.

Requiring offsets against income tax refunds would add to State and local expenditures—\$30 million in 1985, declining to \$10 mil-

lion in 1989. States and localities would have to pay their share of the administrative costs—30 percent in 1985, rising to 33 percent in 1989. These costs would be partially offset by their share of the reduced public assistance expenditures in AFDC and Medicaid as a result of the added child support collections.

Reducing the Federal financing share would shift Federal costs to States and localities. State and local costs would equal Federal savings: \$10 million, \$25 million, and \$35 million in fiscal years 1987 through 1989, respectively.

The requirement for application and late payment fees would reduce State and local government expenditures by the State shares of program costs. Estimated savings would rise from \$3 million in 1985 to \$10 million in 1989.

Other provisions of the bill would have little effect on State and local government expenditures. Increased expenditures on ADP systems would have little effect because the States' share is only 10 percent.

The estimated increase in new families coming onto the CSE program as a result of these amendments would raise State and local expenditures by States' financing share of 30 to 33 percent. Partially offsetting these added expenditures would be reduced public assistance outlays, reflecting States' 46 percent share of AFDC and Medicaid.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Janice Peskin.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

## VI. Vote of the Committee

In compliance with paragraph 7(c) of Rule XXVI of the Standing Rules of the Senate, the following statement is made relative to the vote of the committee on the motion to report the bill. H.R. 4325, as amended, was ordered favorably reported by a rollcall vote of 20 yeas and 0 nays.

## VII. Changes in Existing Law Made by the Bill, as Reported

In the opinion of the committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of subsection 4 of Rule XXIX of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill, H.R. 4325, as reported by the committee).



## CHILD SUPPORT ENFORCEMENT AMENDMENTS OF 1984

AUGUST 1, 1984.—Ordered to be printed

Mr. ROSTENKOWSKI, from the committee of conference,  
submitted the following

### CONFERENCE REPORT

[To accompany H.R. 4325]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4325) to amend part D of title IV of the Social Security Act to assure, through mandatory income withholding, incentive payments to States, and other improvements in the child support enforcement program, that all children in the United States who are in need of assistance in securing financial support from their parents will receive such assistance regardless of their circumstances, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

#### SHORT TITLE; TABLE OF CONTENTS

*SECTION 1. This Act may be cited as the "Child Support Enforcement Amendments of 1984".*

#### TABLE OF CONTENTS

*Sec. 1. Short title; table of contents.*

*Sec. 2. Purpose of the program.*

*Sec. 3. Improved child support enforcement through required State laws and procedures.*

*Sec. 4. Federal matching of administrative costs.*

*Sec. 5. Federal incentive payments.*

*Sec. 6. 90-percent matching for automated management systems used in income withholding and other required procedures.*

- Sec. 7. Continuation of support enforcement for AFDC recipients whose benefits are being terminated.*
- Sec. 8. Special project grants to promote improvements in interstate enforcement.*
- Sec. 9. Periodic review of effectiveness of State programs; modification of penalty.*
- Sec. 10. Extension of section 1115 demonstration authority to child support enforcement program.*
- Sec. 11. Child support enforcement for certain children in foster care.*
- Sec. 12. Enforcement with respect to both child and spousal support.*
- Sec. 13. Modifications in content of annual report of the Secretary.*
- Sec. 14. Requirement that availability of child support enforcement services be publicized.*
- Sec. 15. State Commissions on child support.*
- Sec. 16. Inclusion of medical support in child support orders.*
- Sec. 17. Increased availability of Federal parent locator service to State agencies.*
- Sec. 18. State guidelines for child support awards.*
- Sec. 19. Availability of social security numbers for child support enforcement purposes.*
- Sec. 20. Extension of eligibility under title XIX when support collection results in termination of AFDC eligibility.*
- Sec. 21. Collection of past-due support from Federal tax refunds.*
- Sec. 22. Wisconsin child support initiative.*
- Sec. 23. Sense of the Congress that State and local governments should focus on the problems of child custody, child support, and related domestic issues.*

#### **PURPOSE OF THE PROGRAM**

*SEC. 2. Section 451 of the Social Security Act is amended by striking out "and obtaining child and spousal support," and inserting in lieu thereof "obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this part to all children (whether or not eligible for aid under part A) for whom such assistance is requested,".*

#### **IMPROVED CHILD SUPPORT ENFORCEMENT THROUGH REQUIRED STATE LAWS AND PROCEDURES**

*SEC. 3. (a) Section 454 of the Social Security Act is amended—*

- (1) by striking out "and" at the end of paragraph (18);*
- (2) by striking out the period at the end of paragraph (19) and inserting in lieu thereof "; and"; and*
- (3) by adding after paragraph (19) the following new paragraph:*

*"(20) provide, to the extent required by section 466, that the State (A) shall have in effect all of the laws to improve child support enforcement effectiveness which are referred to in that section, and (B) shall implement the procedures which are prescribed in or pursuant to such laws.".*

*(b) Part D of title IV of such Act is further amended by adding at the end thereof the following new section:*

#### **"REQUIREMENT OF STATUTORILY PRESCRIBED PROCEDURES TO IMPROVE EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT**

*"SEC. 466. (a) In order to satisfy section 454(20)(A), each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part:*

*“(1) Procedures described in subsection (b) for the withholding from income of amounts payable as support.*

*“(2) Procedures under which expedited processes (determined in accordance with regulations of the Secretary) are in effect under the State judicial system or under State administrative processes (A) for obtaining and enforcing support orders, and (B) at the option of the State, for establishing paternity. The Secretary may waive the provisions of this paragraph with respect to one or more political subdivisions within the State on the basis of the effectiveness and timeliness of support order issuance and enforcement within the political subdivision (in accordance with the general rule for exemptions under subsection (d)).*

*“(3) Procedures under which the State child support enforcement agency shall request, and the State shall provide, that for the purpose of enforcing a support order under any State plan approved under this part—*

*“(A) any refund of State income tax which would otherwise be payable to an absent parent will be reduced, after notice has been sent to that absent parent of the proposed reduction and the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State), by the amount of any overdue support owed by such absent parent;*

*“(B) the amount by which such refund is reduced shall be distributed in accordance with section 457(b)(4) or (d)(3) in the case of overdue support assigned to a State pursuant to section 402(a)(26) or 471(a)(17), or, in the case of overdue support which a State has agreed to collect under section 454(6), shall be distributed, after deduction of any fees imposed by the State to cover the costs of collection, to the child or parent to whom such support is owed; and*

*“(C) notice of the absent parent’s social security account number (or numbers, if he has more than one such number) and home address shall be furnished to the State agency requesting the refund offset, and to the State agency enforcing the order.*

*“(4) Procedures under which liens are imposed against real and personal property for amounts of overdue support owed by an absent parent who resides or owns property in the State.*

*“(5) Procedures which permit the establishment of the paternity of any child at any time prior to such child’s eighteenth birthday.*

*“(6) Procedures which require that an absent parent give security, post a bond, or give some other guarantee to secure payment of overdue support, after notice has been sent to such absent parent of the proposed action and of the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State).*

*“(7) Procedures by which information regarding the amount of overdue support owed by an absent parent residing in the State will be made available to any consumer reporting agency (as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f))) upon the request of such agency; except that (A) if the amount of the overdue support involved in any case is less*



than \$1,000, information regarding such amount shall be made available only at the option of the State, (B) any information with respect to an absent parent shall be made available under such procedures only after notice has been sent to such absent parent of the proposed action, and such absent parent has been given a reasonable opportunity to contest the accuracy of such information (and after full compliance with all procedural due process requirements of the State), and (C) a fee for furnishing such information, in an amount not exceeding the actual cost thereof, may be imposed on the requesting agency by the State.

“(8) Procedures under which all child support orders which are issued or modified in the State will include provision for withholding from wages, in order to assure that withholding as a means of collecting child support is available if arrearages occur without the necessity of filing application for services under this part.

Notwithstanding section 454(20)(B), the procedures which are required under paragraphs (3), (4), (6), and (7) need not be used or applied in cases where the State determines (using guidelines which are generally available within the State and which take into account the payment record of the absent parent, the availability of other remedies, and other relevant considerations) that such use or application would not carry out the purposes of this part or would be otherwise inappropriate in the circumstances.

“(b) The procedures referred to in subsection (a)(1) (relating to the withholding from income of amounts payable as support) must provide for the following:

“(1) In the case of each absent parent against whom a support order is or has been issued or modified in the State, and is being enforced under the State plan, so much of such parent's wages (as defined by the State for purposes of this section) must be withheld, in accordance with the succeeding provisions of this subsection, as is necessary to comply with the order and provide for the payment of any fee to the employer which may be required under paragraph (6)(A), up to the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)). If there are arrearages to be collected, amounts withheld to satisfy such arrearages, when added to the amounts withheld to pay current support and provide for the fee, may not exceed the limit permitted under such section 303(b), but the State need not withhold up to the maximum amount permitted under such section in order to satisfy arrearages.

“(2) Such withholding must be provided without the necessity of any application therefor in the case of a child (whether or not eligible for aid under part A) with respect to whom services are already being provided under the State plan under this part, and must be provided in accordance with this subsection on the basis of an application for services under the State plan in the case of any other child in whose behalf a support order has been issued or modified in the State. In either case such withholding must occur without the need for any amendment to the support order involved or for any further action (other than



those actions required under this part) by the court or other entity which issued such order.

"(3) An absent parent shall become subject to such withholding, and the advance notice required under paragraph (4) shall be given, on the earliest of—

"(A) the date on which the payments which the absent parent has failed to make under such order are at least equal to the support payable for one month,

"(B) the date as of which the absent parent requests that such withholding begin, or

"(C) such earlier date as the State may select.

"(4)(A) Such withholding must be carried out in full compliance with all procedural due process requirements of the State, and (subject to subparagraph (B)) the State must send advance notice to each absent parent to whom paragraph (1) applies regarding the proposed withholding and the procedures such absent parent should follow if he or she desires to contest such withholding on the grounds that withholding (including the amount to be withheld) is not proper in the case involved because of mistakes of fact. If the absent parent contests such withholding on those grounds, the State shall determine whether such withholding will actually occur, shall (within no more than 45 days after the provision of such advance notice) inform such parent of whether or not withholding will occur and (if so) of the date on which it is to begin, and shall furnish such parent with the information contained in any notice given to the employer under paragraph (6)(A) with respect to such withholding.

"(B) The requirement of advance notice set forth in the first sentence of subparagraph (A) shall not apply in the case of any State which has a system of income withholding for child support purposes in effect on the date of the enactment of this section if such system provides on that date, and continues to provide, such procedures as may be necessary to meet the procedural due process requirements of State law.

"(5) Such withholding must be administered by a public agency designated by the State, and the amounts withheld must be expeditiously distributed by the State or such agency in accordance with section 457 under procedures (specified by the State) adequate to document payments of support and to track and monitor such payments, except that the State may establish or permit the establishment of alternative procedures for the collection and distribution of such amounts (under the supervision of such public agency) otherwise than through such public agency so long as the entity making such collection and distribution is publicly accountable for its actions taken in carrying out such procedures, and so long as such procedures will assure prompt distribution, provide for the keeping of adequate records to document payments of support, and permit the tracking and monitoring of such payments.

"(6)(A)(i) The employer of any absent parent to whom paragraph (1) applies, upon being given notice as described in clause (ii), must be required to withhold from such absent parent's wages the amount specified by such notice (which may include

a fee, established by the State, to be paid to the employer unless waived by such employer) and pay such amount (after deducting and retaining any portion thereof which represents the fee so established) to the appropriate agency (or other entity authorized to collect the amounts withheld under the alternative procedures described in paragraph (5)) for distribution in accordance with section 457.

“(ii) The notice given to the employer shall contain only such information as may be necessary for the employer to comply with the withholding order.

“(B) Methods must be established by the State to simplify the withholding process for employers to the greatest extent possible, including permitting any employer to combine all withheld amounts into a single payment to each appropriate agency or entity (with the portion thereof which is attributable to each individual employee being separately designated).

“(C) The employer must be held liable to the State for any amount which such employer fails to withhold from wages due an employee following receipt by such employer of proper notice under subparagraph (A), but such employer shall not be required to vary the normal pay and disbursement cycles in order to comply with this paragraph.

“(D) Provision must be made for the imposition of a fine against any employer who discharges from employment, refuses to employ, or takes disciplinary action against any absent parent subject to wage withholding required by this subsection because of the existence of such withholding and the obligations or additional obligations which it imposes upon the employer.

“(7) Support collection under this subsection must be given priority over any other legal process under State law against the same wages.

“(8) The State may take such actions as may be necessary to extend its system of withholding under this subsection so that such system will include withholding from forms of income other than wages, in order to assure that child support owed by absent parents in the State will be collected without regard to the types of such absent parents' income or the nature of their income-producing activities.

“(9) The State must extend its withholding system under this subsection so that such system will include withholding from income derived within such State in cases where the applicable support orders were issued in other States, in order to assure that child support owed by absent parents in such State or any other State will be collected without regard to the residence of the child for whom the support is payable or of such child's custodial parent.

“(10) Provision must be made for terminating withholding.

“(c) Any State may at its option, under its plan approved under section 454, establish procedures under which support payments under this part will be made through the State agency or other entity which administers the State's income withholding system in any case where either the absent parent or the custodial parent requests it, even though no arrearages in child support payments are

involved and no income withholding procedures have been instituted; but in any such case an annual fee for handling and processing such payments, in an amount not exceeding the actual costs incurred by the State in connection therewith or \$25, whichever is less, shall be imposed on the requesting parent by the State.

“(d) If a State demonstrates to the satisfaction of the Secretary, through the presentation to the Secretary of such data pertaining to caseloads, processing times, administrative costs, and average support collections, and such other data or estimates as the Secretary may specify, that the enactment of any law or the use of any procedure or procedures required by or pursuant to this section will not increase the effectiveness and efficiency of the State child support enforcement program, the Secretary may exempt the State, subject to the Secretary’s continuing review and to termination of the exemption should circumstances change, from the requirement to enact the law or use the procedure or procedures involved.

“(e) For purposes of this section, the term ‘overdue support’ means the amount of a delinquency pursuant to an obligation determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a minor child which is owed to or on behalf of such child, or for support and maintenance of the absent parent’s spouse (or former spouse) with whom the child is living if and to the extent that spousal support (with respect to such spouse or former spouse) would be included for purposes of paragraph (4) or (6) of section 454. At the option of the State, overdue support may include amounts which otherwise meet the definition in the first sentence of this subsection but which are owed to or on behalf of a child who is not a minor child. The option to include support owed to children who are not minors shall apply independently to each procedure specified under this section.”.

(c) Section 454(6)(B) of such Act is amended to read as follows: “(B) an application fee for furnishing such services shall be imposed, which shall be paid by the individual applying for such services, or recovered from the absent parent, or paid by the State out of its own funds (the payment of which from State funds shall not be considered as an administrative cost of the State for the operation of the plan, and shall be considered income to the program), the amount of which (i) will not exceed \$25 (or such higher or lower amount (which shall be uniform for all States) as the Secretary may determine to be appropriate for any fiscal year to reflect increases or decreases in administrative costs), and (ii) may vary among such individuals on the basis of ability to pay (as determined by the State), and”.

(d) Section 454 of such Act (as amended by subsection (a) of this section) is further amended—

(1) by striking out “and” at the end of paragraph (19);

(2) by striking out the period at the end of paragraph (20) and inserting in lieu thereof “; and”; and

(3) by adding after paragraph (20) the following new paragraph:

“(21)(A) at the option of the State, impose a late payment fee on all overdue support (as defined in section 466(e)) under any obligation being enforced under this part, in an amount equal to a uniform percentage determined by the State (not less than 3



percent nor more than 6 percent) of the overdue support, which shall be payable by the absent parent owing the overdue support; and

“(B) assure that the fee will be collected in addition to, and only after full payment of, the overdue support, and that the imposition of the late payment fee shall not directly or indirectly result in a decrease in the amount of the support which is paid to the child (or spouse) to whom, or on whose behalf, it is owed.”.

(e) Section 454(5) of such Act is amended by inserting after “directly to the family” the following: “, and the individual will be notified at least annually of the amount of the support payments collected;”.

(f) Section 454 of such Act is further amended by adding at the end thereof (after and below paragraph (21) (as added by subsection (d) of this section)) the following new sentence:

“The State may allow the jurisdiction which makes the collection involved to retain any application fee under paragraph (6)(B) or any late payment fee under paragraph (21).”.

(g)(1) Except as provided in paragraphs (2) and (3), the amendments made by this section shall become effective on October 1, 1985.

(2) Section 454(21) of the Social Security Act (as added by subsection (d) of this section), and section 466(e) of such Act (as added by subsection (b) of this section), shall be effective with respect to support owed for any month beginning after the date of the enactment of this Act.

(3) In the case of a State with respect to which the Secretary of Health and Human Services has determined that State legislation is required in order to conform the State plan approved under part D of title IV of the Social Security Act to the requirements imposed by any amendment made by this section, the State plan shall not be regarded as failing to comply with the requirements of such part solely by reason of its failure to meet the requirements imposed by such amendment prior to the beginning of the fourth month beginning after the end of the first session of the State legislature which ends on or after October 1, 1985. For purposes of the preceding sentence, the term “session” means a regular, special, budget, or other session of a State legislature.

#### FEDERAL MATCHING OF ADMINISTRATIVE COSTS

SEC. 4. (a) Section 455(a) of the Social Security Act is amended—

(1) by inserting “(1)” after “(a)”;

(2) by striking out “, beginning with the quarter commencing July 1, 1975,”;

(3) by striking out paragraph (2) and redesignating paragraphs (1) and (3) as subparagraphs (A) and (B), respectively;

(4) by amending paragraph (1)(A) as so redesignated to read as follows:

“(A) equal to the percent specified in paragraph (2) of the total amounts expended by such State during such quarter for the operation of the plan approved under section 454, and”;



(5) in paragraph (1)(B) as so redesignated, by striking out "specified in clause (1) or (2)" and inserting in lieu thereof "specified in subparagraph (A)"; and

(6) by adding at the end thereof the following new paragraph:  
 "(2) The percent applicable to quarters in a fiscal year for purposes of paragraph (1)(A) is—

"(A) 70 percent for fiscal years 1984, 1985, 1986, and 1987,

"(B) 68 percent for fiscal years 1988 and 1989, and

"(C) 66 percent for fiscal year 1990 and each fiscal year thereafter."

(b) Subsections (d)(1)(B), (d)(2)(A), (d)(2)(B), and (e) of section 452 of such Act are each amended by striking out "455(a)(3)" and inserting in lieu thereof "455(a)(1)(B)".

(c) The amendments made by this section shall apply to fiscal years after fiscal year 1983.

#### FEDERAL INCENTIVE PAYMENTS

SEC. 5. (a) Section 458 of the Social Security Act is amended to read as follows:

#### "INCENTIVE PAYMENTS TO STATES

"SEC. 458. (a) In order to encourage and reward State child support enforcement programs which perform in a cost-effective and efficient manner to secure support for all children who have sought assistance in securing support, whether such children reside within the State or elsewhere and whether or not they are eligible for aid to families with dependent children under a State plan approved under part A of this title, and regardless of the economic circumstances of their parents, the Secretary shall, from support collected which would otherwise represent the Federal share of assistance to families of absent parents, pay to each State for each fiscal year, on a quarterly basis (as described in subsection (e)) beginning with the quarter commencing October 1, 1985, an incentive payment in an amount determined under subsection (b).

"(b)(1) Except as provided in paragraphs (2), (3), and (4), the incentive payment shall be equal to—

"(A) 6 percent of the total amount of support collected under the plan during the fiscal year in cases in which the support obligation involved is assigned to the State pursuant to section 402(a)(26) or section 471(a)(17) (with such total amount for any fiscal year being hereafter referred to in this section as the State's 'AFDC collections' for that year), plus

"(B) 6 percent of the total amount of support collected during the fiscal year in all other cases under this part (with such total amount for any fiscal year being hereafter referred to in this section as the State's 'non-AFDC collections' for that year).

"(2) If subsection (c) applies with respect to a State's AFDC collections or non-AFDC collections for any fiscal year, the percent specified in paragraph (1)(A) or (B) (with respect to such collections) shall be increased to the higher percent determined under such subsection (with respect to such collections) in determining the State's incentive payment under this subsection for that year.

*"(3) The dollar amount of the portion of the State's incentive payment for any fiscal year which is determined on the basis of its non-AFDC collections under paragraph (1)(B) (after adjustment under subsection (c) if applicable) shall in no case exceed—*

*"(A) the dollar amount of the portion of such payment which is determined on the basis of its AFDC collections under paragraph (1)(A) (after adjustment under subsection (c) if applicable) in the case of fiscal year 1986 or 1987;*

*"(B) 105 percent of such dollar amount in the case of fiscal year 1988;*

*"(C) 110 percent of such dollar amount in the case of fiscal year 1989; or*

*"(D) 115 percent of such dollar amount in the case of fiscal year 1990 or any fiscal year thereafter.*

*"(4) The Secretary shall make such additional payments to the State under this part, for fiscal year 1986 or 1987, as may be necessary to assure that the total amount of payments under this section and section 455(a)(1)(A) for such fiscal year is no less than 80 percent of the amount that would have been payable to that State and its political subdivisions for such fiscal year under this section and section 455(a)(1)(A) if those sections (including the amendment made by section 5(c)(2)(A) of the Child Support Enforcement Amendments of 1984) had remained in effect as they were in effect for fiscal year 1985.*

*"(c) If the total amount of a State's AFDC collections or non-AFDC collections for any fiscal year bears a ratio to the total amount expended by the State in that year for the operation of its plan approved under section 454 for which payment may be made under section 455 (with the total amount so expended in any fiscal year being hereafter referred to in this section as the State's 'combined AFDC/non-AFDC administrative costs' for that year) which is equal to or greater than 1.4, the relevant percent specified in subparagraph (A) or (B) of subsection (b)(1) (with respect to such collections) shall be increased to—*

*"(1) 6.5 percent, plus*

*"(2) one-half of 1 percent for each full two-tenths by which such ratio exceeds 1.4;*

*except that the percent so specified shall in no event be increased (for either AFDC collections or non-AFDC collections) to more than 10 percent. For purposes of the preceding sentence, laboratory costs incurred in determining paternity in any fiscal year may at the option of the State be excluded from the State's combined AFDC/non-AFDC administrative costs for that year.*

*"(d) In computing incentive payments under this section, support which is collected by one State on behalf of individuals residing in another State shall be treated as having been collected in full by each such State.*

*"(e) The amounts of the incentive payments to be made to the various States under this section for any fiscal year shall be estimated by the Secretary at or before the beginning of such year on the basis of the best information available. The Secretary shall make such payments for such year, on a quarterly basis (with each quarterly payment being made no later than the beginning of the quarter involved), in the amounts so estimated, reduced or increased to the*

extent of any overpayments or underpayments which the Secretary determines were made under this section to the States involved for prior periods and with respect to which adjustment has not already been made under this subsection. Upon the making of any estimate by the Secretary under the preceding sentence, any appropriations available for payments under this section shall be deemed obligated."

(b) Section 454 of such Act (as amended by subsections (a), (d), and (f) of section 3 of this Act) is amended—

(1) by striking out "and" at the end of paragraph (20);

(2) by striking out the period at the end of paragraph (21) and inserting in lieu thereof "; and"; and

(3) by inserting immediately after paragraph (21) the following new paragraph:

"(22) in order for the State to be eligible to receive any incentive payments under section 458, provide that, if one or more political subdivisions of the State participate in the costs of carrying out activities under the State plan during any period, each such subdivision shall be entitled to receive an appropriate share (as determined by the State) of any such incentive payments made to the State for such period, taking into account the efficiency and effectiveness of the activities carried out under the State plan by such political subdivision."

(c)(1) The amendments made by the preceding provisions of this section shall become effective on October 1, 1985.

(2)(A) Effective until September 30, 1985, section 458(a) of the Social Security Act is amended by striking out "distributed as provided in section 457 to reduce or repay assistance payments" and inserting in lieu thereof "distributed as provided in paragraphs (1), (2), and (4)(A) of section 457(b)".

(B) The reference to provisions of section 457(b) of the Social Security Act in the amendment made by subparagraph (A) of this paragraph is a reference to such provisions as in effect after the effective date of section 2640(b) of the Deficit Reduction Act of 1984.

#### 90-PERCENT MATCHING FOR AUTOMATED MANAGEMENT SYSTEMS USED IN INCOME WITHHOLDING AND OTHER REQUIRED PROCEDURES

SEC. 6. (a) Section 454(16) of the Social Security Act is amended by striking out "(and (D))" and inserting in lieu thereof the following: "(D) to facilitate the development and improvement of the income withholding and other procedures required under section 466(a) through the monitoring of support payments, the maintenance of accurate records regarding the payment of support, and the prompt provision of notice to appropriate officials with respect to any arrearages in support payments which may occur, and (E)".

(b) Section 455(a)(1)(B) of such Act (as redesignated by section 4(a) of this Act) is amended—

(1) by inserting after "automatic data processing and information retrieval system" the following: "(including in such sums the full cost of the hardware components of such system)"; and



(2) by inserting before the semicolon at the end thereof the following: “, or meets such requirements without regard to clause (D) thereof”.

(c) The amendments made by this section shall apply with respect to quarters beginning on or after October 1, 1984.

CONTINUATION OF SUPPORT ENFORCEMENT FOR AFDC RECIPIENTS  
WHOSE BENEFITS ARE BEING TERMINATED

SEC. 7. (a) Section 457(c) of the Social Security Act is amended—  
(1) by striking out “may” in the matter preceding paragraph (1) and inserting in lieu thereof “shall”; and

(2) by striking out “the net amount of” in paragraph (2), and by striking out “to the family” and all that follows in such paragraph and inserting in lieu thereof “to the family (without requiring any formal reapplication and without the imposition of any application fee) on the same basis as in the case of other individuals who are not receiving assistance under part A of this title.”

(b) The amendments made by subsection (a) shall become effective October 1, 1984.

SPECIAL PROJECT GRANTS TO PROMOTE IMPROVEMENTS IN INTERSTATE  
ENFORCEMENT

SEC. 8. Section 455 of the Social Security Act is amended by adding at the end thereof the following new subsection:

“(e)(1) In order to encourage and promote the development and use of more effective methods of enforcing support obligations under this part in cases where either the children on whose behalf the support is sought or their absent parents do not reside in the State where such cases are filed, the Secretary is authorized to make grants, in such amounts and on such terms and conditions as the Secretary determines to be appropriate, to States which propose to undertake new or innovative methods of support collection in such cases and which will use the proceeds of such grants to carry out special projects designed to demonstrate and test such methods.

“(2) A grant under this subsection shall be made only upon a finding by the Secretary that the project involved is likely to be of significant assistance in carrying out the purpose of this subsection; and with respect to such project the Secretary may waive any of the requirements of this part which would otherwise be applicable, to such extent and for such period as the Secretary determines is necessary or desirable in order to enable the State to carry out the project.

“(3) At the time of its application for a grant under this subsection the State shall submit to the Secretary a statement describing in reasonable detail the project for which the proceeds of the grant are to be used, and the State shall from time to time thereafter submit to the Secretary such reports with respect to the project as the Secretary may specify.

“(4) Amounts expended by a State in carrying out a special project assisted under this section shall be considered, for purposes of section 458(b) (as amended by section 5(a) of the Child Support Enforcement Amendments of 1984), to have been expended for the operation of the State’s plan approved under section 454.



"(5) There is authorized to be appropriated the sum of \$7,000,000 for fiscal year 1985, \$12,000,000 for fiscal year 1986, and \$15,000,000 for each fiscal year thereafter, to be used by the Secretary in making grants under this subsection."

PERIODIC REVIEW OF EFFECTIVENESS OF STATE PROGRAMS;  
MODIFICATION OF PENALTY

SEC. 9. (a)(1) Section 452(a)(4) of the Social Security Act is amended by striking out "not less often than annually" and inserting in lieu thereof "not less often than once every three years (or not less often than annually in the case of any State to which a reduction is being applied under section 403(h)(1), or which is operating under a corrective action plan in accordance with section 403(h)(2))".

(2) Section 402(a)(27) of such Act is amended by striking out "operate a child support program in conformity with such plan" and inserting in lieu thereof "operates a child support program in substantial compliance with such plan".

(b) Section 403(h) of such Act is amended to read as follows:

"(h)(1) Notwithstanding any other provision of this Act, if a State's program operated under part D is found as a result of a review conducted under section 452(a)(4) not to have complied substantially with the requirements of such part for any quarter beginning after September 30, 1983, and the Secretary determines that the State's program is not complying substantially with such requirements at the time such finding is made, the amounts otherwise payable to the State under this part for such quarter and each subsequent quarter, prior to the first quarter throughout which the State program is found to be in substantial compliance with such requirements, shall be reduced (subject to paragraph (2)) by—

"(A) not less than one nor more than two percent, or

"(B) not less than two nor more than three percent, if the finding is the second consecutive such finding made as a result of such a review, or

"(C) not less than three nor more than five percent, if the finding is the third or a subsequent consecutive such finding made as a result of such a review.

"(2)(A) The reductions required under paragraph (1) shall be suspended for any quarter if—

"(i) the State submits a corrective action plan, within a period prescribed by the Secretary following notice of the finding under paragraph (1), which contains steps necessary to achieve substantial compliance within a time period which the Secretary finds to be appropriate;

"(ii) the Secretary approves such corrective action plan (and any amendments thereto) as being sufficient to achieve substantial compliance; and

"(iii) the Secretary finds that the corrective action plan (and any amendment thereto approved by the Secretary under clause (ii)), is being fully implemented by the State and that the State is progressing in accordance with the timetable contained in the plan to achieve substantial compliance with such requirements.

"(B) A suspension of the penalty under subparagraph (A) shall continue until such time as the Secretary determines that—

*"(i) the State has achieved substantial compliance,*

*"(ii) the State is no longer implementing its corrective action plan, or*

*"(iii) the State is implementing or has implemented its corrective action plan but has failed to achieve substantial compliance within the appropriate time period (as specified in subparagraph (A)(i)).*

*"(C)(i) In the case of a State whose penalty suspension ends pursuant to subparagraph (B)(i), the penalty shall not be applied.*

*"(ii) In the case of a State whose penalty suspension ends pursuant to subparagraph (B)(ii), the penalty shall be applied as if the suspension had not occurred.*

*"(iii) In the case of a State whose penalty suspension ends pursuant to subparagraph (B)(iii), the penalty shall be applied to all quarters ending after the expiration of the time period specified in such subparagraph (and prior to the first quarter throughout which the State program is found to be in substantial compliance).*

*"(3) For purposes of this subsection, section 402(a)(27), and section 452(a)(4), a State which is not in full compliance with the requirements of this part shall be determined to be in substantial compliance with such requirements only if the Secretary determines that any noncompliance with such requirements is of a technical nature which does not adversely affect the performance of the child support enforcement program."*

*(c) The amendments made by this section shall be effective on and after October 1, 1983.*

#### **EXTENSION OF SECTION 1115 DEMONSTRATION AUTHORITY TO CHILD SUPPORT ENFORCEMENT PROGRAM**

**SEC. 10.** (a) Section 1115(a) of the Social Security Act is amended—

(1) by striking out "part A" in the matter preceding paragraph (1) and inserting in lieu thereof "part A or D";

(2) by striking out "402," in paragraph (1) and inserting in lieu thereof "402, 454,"; and

(3) by striking out "403," in paragraph (2) and inserting in lieu thereof "403, 455,".

(b) Section 1115 of such Act is further amended by adding at the end thereof the following new subsection:

*"(c) In the case of any experimental, pilot, or demonstration project undertaken under subsection (a) to assist in promoting the objectives of part D of title IV, the project—*

*"(1) must be designed to improve the financial well-being of children or otherwise improve the operation of the child support program;*

*"(2) may not permit modifications in the child support program which would have the effect of disadvantaging children in need of support; and*

*"(3) must not result in increased cost to the Federal Government under the program of aid to families with dependent children."*

CHILD SUPPORT ENFORCEMENT FOR CERTAIN CHILDREN IN FOSTER  
CARE

SEC. 11. (a)(1) Section 457 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(d) Notwithstanding the preceding provisions of this section, amounts collected by a State as child support for months in any period on behalf of a child for whom a public agency is making foster care maintenance payments under part E—

"(1) shall be retained by the State to the extent necessary to reimburse it for the foster care maintenance payments made with respect to the child during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing);

"(2) shall be paid to the public agency responsible for supervising the placement of the child to the extent that the amounts collected exceed the foster care maintenance payments made with respect to the child during such period but not the amounts required by a court or administrative order to be paid as support on behalf of the child during such period; and the responsible agency may use the payments in the manner it determines will serve the best interests of the child, including setting such payments aside for the child's future needs or making all or a part thereof available to the person responsible for meeting the child's day-to-day needs; and

"(3) shall be retained by the State, if any portion of the amounts collected remains after making the payments required under paragraphs (1) and (2), to the extent that such portion is necessary to reimburse the State (with appropriate reimbursement to the Federal Government to the extent of its participation in the financing) for any past foster care maintenance payments (or payments of aid to families with dependent children) which were made with respect to the child (and with respect to which past collections have not previously been retained); and any balance shall be paid to the State agency responsible for supervising the placement of the child, for use by such agency in accordance with paragraph (2)."

(2) Section 457(b) of such Act is amended by inserting "(subject to subsection (d))" after "shall" in the matter preceding paragraph (1).

(b) Part D of title IV of such Act is further amended—

(1) in section 454(4)(B), by inserting "including an assignment with respect to a child on whose behalf a State agency is making foster care maintenance payments under part E," immediately after "such assignment is effective," and by inserting "or E" immediately after "part A"; and

(2) in section 456(a), by inserting "or secured on behalf of a child receiving foster care maintenance payments" immediately after "section 402(a)(26)".

(c) Section 471(a) of such Act is amended—

(1) by striking out "and" at the end of paragraph (15);

(2) by striking out the period at the end of paragraph (16) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:



"(17) provides that, where appropriate, all steps will be taken, including cooperative efforts with the State agencies administering the plans approved under parts A and D, to secure an assignment to the State of any rights to support on behalf of each child receiving foster care maintenance payments under this part."

(d) Section 464(a) of such Act is amended—

(1) by inserting "or section 471(a)(17)" after "402(a)(26)"; and

(2) by striking out "457(b)(3)" and inserting in lieu thereof "457(b)(4) or (d)(3)".

(e) The amendments made by this section shall become effective October 1, 1984, and shall apply to collections made on or after that date.

#### ENFORCEMENT WITH RESPECT TO BOTH CHILD AND SPOUSAL SUPPORT

SEC. 12. (a) Section 454(4)(B) of the Social Security Act is amended—

(1) by striking out "and, at the option of the State," and inserting in lieu thereof "and"; and

(2) by inserting "and only if the support obligation established with respect to the child is being enforced under the plan" immediately after "but only if a support obligation has been established with respect to such spouse".

(b) Clause (A) of section 454(6) of such Act is amended—

(1) by striking out "at the option of the State,"; and

(2) by inserting "and only if the support obligation established with respect to the child is being enforced under the plan" immediately after "but only if a support obligation has been established with respect to such spouse".

(c) The amendments made by this section shall become effective October 1, 1985.

#### MODIFICATIONS IN CONTENT OF ANNUAL REPORT OF THE SECRETARY

SEC. 13. (a) Section 452(a)(10)(C) of the Social Security Act is amended to read as follows:

"(C) the following data, with the data required under each clause being separately stated for cases where the child is receiving aid to families with dependent children (or foster care maintenance payments under part E), cases where the child was formerly receiving such aid or payments and the State is continuing to collect support assigned to it under section 402(a)(26) or 471(a)(17), and all other cases under this part:

"(i) the total number of cases in which a support obligation has been established in the fiscal year for which the report is submitted, and the total amount of such obligations;

"(ii) the total number of cases in which a support obligation has been established, and the total amount of such obligations;

"(iii) the number of cases described in clause (i) in which support was collected during such fiscal year, and the total amount of such collections;



“(iv) the number of cases described in clause (ii) in which support was collected during such fiscal year, and the total amount of such collections; and

“(v) the number of child support cases filed in each State in such fiscal year, and the amount of the collections made in each State in such fiscal year, on behalf of children residing in another State or against parents residing in another State;”.

(b) Section 452(a)(10) of such Act is further amended—

(1) by striking out “and” at the end of subparagraph (G);

(2) by striking out the period at the end of subparagraph (H) and inserting in lieu thereof “; and”; and

(3) by inserting immediately after subparagraph (H) the following new subparagraph:

“(I) the amount of administrative costs which are expended in each functional category of expenditures, including establishment of paternity.”.

(c) The amendments made by this section shall be effective for reports for fiscal year 1986 and each fiscal year thereafter.

#### REQUIREMENT THAT AVAILABILITY OF CHILD SUPPORT ENFORCEMENT SERVICES BE PUBLICIZED

SEC. 14. (a) Section 454 of the Social Security Act (as amended by the preceding provisions of this Act) is further amended—

(1) by striking out “and” at the end of paragraph (21);

(2) by striking out the period at the end of paragraph (22) and inserting in lieu thereof “; and”; and

(3) by inserting immediately after paragraph (22) the following new paragraph:

“(23) provide that the State will regularly and frequently publicize, through public service announcements, the availability of child support enforcement services under the plan and otherwise, including information as to any application fees for such services and a telephone number or postal address at which further information may be obtained.”.

(b) The amendments made by subsection (a) shall become effective October 1, 1985.

#### STATE COMMISSIONS ON CHILD SUPPORT

SEC. 15. (a) As a condition of the State's eligibility for Federal payments under part A or D of title IV of the Social Security Act for quarters beginning more than 30 days after the date of the enactment of this Act and ending prior to October 1, 1985, the Governor of each State, on or before December 1, 1984, shall (subject to subsection (f)) appoint a State Commission on Child Support.

(b) Each State Commission appointed under subsection (a) shall be composed of members appropriately representing all aspects of the child support system, including custodial and non-custodial parents, the agency or organizational unit administering the State's plan under part D of such title IV, the State judiciary, the executive and legislative branches of the State government, child welfare and social services agencies, and others.

(c) It shall be the function of each State Commission to examine, investigate, and study the operation of the State's child support system for the primary purpose of determining the extent to which such system has been successful in securing support and parental involvement both for children who are eligible for aid under a State plan approved under part A of title IV of such Act and for children who are not eligible for such aid, giving particular attention to such specific problems (among others) as visitation, the establishment of appropriate objective standards for support, the enforcement of interstate obligations, the availability, cost, and effectiveness of services both to children who are eligible for such aid and to children who are not, and the need for additional State or Federal legislation to obtain support for all children.

(d) Each State Commission shall submit to the Governor of the State and make available to the public, no later than October 1, 1985, a full and complete report of its findings and recommendations resulting from the examination, investigation, and study under this section. The Governor shall transmit such report to the Secretary of Health and Human Services along with the Governor's comments thereon.

(e) None of the costs incurred in the establishment and operation of a State Commission under this section, or incurred by such a Commission in carrying out its functions under subsections (c) and (d), shall be considered as expenditures qualifying for Federal payments under part A or D of title IV of the Social Security Act or be otherwise payable or reimbursable by the United States or any agency thereof.

(f) If the Secretary determines, at the request of any State on the basis of information submitted by the State and such other information as may be available to the Secretary, that such State—

(1) has placed in effect and is implementing objective standards for the determination and enforcement of child support obligations,

(2) has established within the five years prior to the enactment of this Act a commission or council with substantially the same functions as the State Commissions provided for under this section, or

(3) is making satisfactory progress toward fully effective child support enforcement and will continue to do so, then such State shall not be required to establish a State Commission under this section and the preceding provisions of this section shall not apply.

#### INCLUSION OF MEDICAL SUPPORT IN CHILD SUPPORT ORDERS

SEC. 16. Section 452 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(f) The Secretary shall issue regulations to require that State agencies administering the child support enforcement program under this part petition for the inclusion of medical support as part of any child support order whenever health care coverage is available to the absent parent at a reasonable cost. Such regulation shall also provide for improved information exchange between such State agencies and the State agencies administering the State medicaid

programs under title XIX with respect to the availability of health insurance coverage.”

#### INCREASED AVAILABILITY OF FEDERAL PARENT LOCATOR SERVICE TO STATE AGENCIES

SEC. 17. Section 453(f) of the Social Security Act is amended by striking out “, after determining that the absent parent cannot be located through the procedures under the control of such State agencies,”.

#### STATE GUIDELINES FOR CHILD SUPPORT AWARDS

SEC. 18. (a) Part D of title IV of the Social Security Act (as amended by section 3(b) of this Act) is further amended by adding at the end thereof the following new section:

##### “STATE GUIDELINES FOR CHILD SUPPORT AWARDS

“SEC. 467. (a) Each State, as a condition for having its State plan approved under this part, must establish guidelines for child support award amounts within the State. The guidelines may be established by law or by judicial or administrative action.

“(b) The guidelines established pursuant to subsection (a) shall be made available to all judges and other officials who have the power to determine child support awards within such State, but need not be binding upon such judges or other officials.

“(c) The Secretary shall furnish technical assistance to the States for establishing the guidelines, and each State shall furnish the Secretary with copies of its guidelines.”.

(b) The amendment made by subsection (a) shall become effective on October 1, 1987.

#### AVAILABILITY OF SOCIAL SECURITY NUMBERS FOR CHILD SUPPORT ENFORCEMENT PURPOSES

SEC. 19. (a) Section 453(b) of the Social Security Act is amended by inserting “the social security account number (or numbers, if the individual involved has more than one such number) and” before “the most recent address”.

(b)(1) Section 6103(l)(6)(A)(i) of the Internal Revenue Code of 1954 is amended by inserting “social security account number (or numbers, if the individual involved has more than one such number),” before “address”.

(2) Section 6103(l)(8)(A) of such Code is amended by inserting “social security account numbers,” before “net earnings”.

#### EXTENSION OF ELIGIBILITY UNDER TITLE XIX WHEN SUPPORT COLLECTION RESULTS IN TERMINATION OF AFDC ELIGIBILITY

SEC. 20. (a) Section 406 of the Social Security Act is amended by adding at the end thereof the following new subsection:

“(h) Each dependent child, and each relative with whom such a child is living (including the spouse of such relative as described in subsection (b)), who becomes ineligible for aid to families with dependent children as a result (wholly or partly) of the collection or increased collection of child or spousal support under part D, and



who has received such aid in at least three of the six months immediately preceding the month in which such ineligibility begins, shall be deemed to be a recipient of aid to families with dependent children for purposes of title XIX for an additional four calendar months beginning with the month in which such ineligibility begins.”

(b) The amendment made by subsection (a) shall apply only with respect to individuals becoming ineligible for aid to families with dependent children (as described in section 406(h) of the Social Security Act as added by such subsection) on or after the date of the enactment of this Act and before October 1, 1988.

(c) Section 1902(a)(10)(A)(i)(I) of such Act is amended by inserting “or 406(h)” after “402(a)(37)”.

#### COLLECTION OF PAST-DUE SUPPORT FROM FEDERAL TAX REFUNDS

SEC. 21. (a) Section 464(a) of the Social Security Act (as amended by section 12(d) of this Act) is further amended by inserting “(1)” after “SEC. 464. (a)” and by adding at the end thereof the following new paragraphs:

“(2)(A) Upon receiving notice from a State agency administering a plan approved under this part that a named individual owes past-due support (as that term is defined for purposes of this paragraph under subsection (c)) which such State has agreed to collect under section 454(6), and that the State agency has sent notice to such individual in accordance with paragraph (3)(A), the Secretary of the Treasury shall determine whether any amounts, as refunds of Federal taxes paid, are payable to such individual (regardless of whether such individual filed a tax return as a married or unmarried individual). If the Secretary of the Treasury finds that any such amount is payable, he shall withhold from such refunds an amount equal to such past-due support, and shall concurrently send notice to such individual that the withholding has been made, including in or with such notice a notification to any other person who may have filed a joint return with such individual of the steps which such other person may take in order to secure his or her proper share of the refund. The Secretary of the Treasury shall pay the amount withheld to the State agency, and the State shall pay to the Secretary of the Treasury any fee imposed by the Secretary of the Treasury to cover the costs of the withholding and any required notification. The State agency shall, subject to paragraph (3)(B), distribute such amount to or on behalf of the child to whom the support was owed.

“(B) This paragraph shall apply only with respect to refunds payable under section 6402 of the Internal Revenue Code of 1954 after December 31, 1985, and before January 1, 1991.

“(3)(A) Prior to notifying the Secretary of the Treasury under paragraph (1) or (2) that an individual owes past-due support, the State shall send notice to such individual that a withholding will be made from any refund otherwise payable to such individual. The notice shall also (i) instruct the individual owing the past-due support of the steps which may be taken to contest the State’s determination that past-due support is owed or the amount of the past-due support, and (ii) provide information, as may be prescribed by the



Secretary of Health and Human Services by regulation in consultation with the Secretary of the Treasury, with respect to procedures to be followed, in the case of a joint return, to protect the share of the refund which may be payable to another person.

“(B) If the Secretary of the Treasury determines that an amount should be withheld under paragraph (1) or (2), and that the refund from which it should be withheld is based upon a joint return, the Secretary of the Treasury shall notify the State that the withholding is being made from a refund based upon a joint return, and shall furnish to the State the names and addresses of each taxpayer filing such joint return. In the case of a withholding under paragraph (2), the State may delay distribution of the amount withheld until the State has been notified by the Secretary of the Treasury that the other person filing the joint return has received his or her proper share of the refund, but such delay may not exceed six months.

“(C) If the other person filing the joint return with the named individual owing the past-due support takes appropriate action to secure his or her proper share of a refund from which a withholding was made under paragraph (1) or (2), the Secretary of the Treasury shall pay such share to such other person. The Secretary of the Treasury shall deduct the amount of such payment from amounts subsequently payable to the State agency to which the amount originally withheld from such refund was paid.

“(D) In any case in which an amount was withheld under paragraph (1) or (2) and paid to a State, and the State subsequently determines that the amount certified as past-due support was in excess of the amount actually owed at the time the amount withheld is to be distributed to or on behalf of the child, the State shall pay the excess amount withheld to the named individual thought to have owed the past-due support (or, in the case of amounts withheld on the basis of a joint return, jointly to the parties filing such return).”

(b)(1) Section 464(a)(1) of such Act (as redesignated by subsection (a) of this section) is amended by striking out “and pay” in the second sentence and inserting in lieu thereof the following: “shall concurrently send notice to such individual that the withholding has been made (including in or with such notice a notification to any other person who may have filed a joint return with such individual of the steps which such other person may take in order to secure his or her proper share of the refund), and shall pay”.

(2) Section 464(b) of such Act is amended—

(A) by inserting “(1)” after “(b)”;

(B) by striking out “The regulations shall specify” in the second sentence and inserting in lieu thereof “The regulations shall be consistent with the provisions of subsection (a)(3), shall specify”;

(C) by striking out “and provide” and inserting in lieu thereof “and shall provide”;

(D) by adding at the end of paragraph (1) as so redesignated the following: “Any fee paid to the Secretary of the Treasury pursuant to this subsection may be used to reimburse appropriations which bore all or part of the cost of applying such procedure.”; and

(E) by adding at the end thereof the following new paragraph:

"(2) In the case of withholdings made under subsection (a)(2), the regulations promulgated pursuant to this subsection shall include the following requirements:

"(A) The withholding shall apply only in the case where the State determines that the amount of the past-due support which will be owed at the time the withholding is to be made, based upon the pattern of payment of support and other enforcement actions being pursued to collect the past-due support, is equal to or greater than \$500. The State may limit the \$500 threshold amount to amounts of past-due support accrued since the time that the State first began to enforce the child support order involved under the State plan, and may limit the application of the withholding to past-due support accrued since such time.

"(B) The fee which the Secretary of the Treasury may impose to cover the costs of the withholding and notification may not exceed \$25 per case submitted."

(c) Section 464(c) of such Act is amended—

(1) by striking out "(c) As used in this part" and inserting in lieu thereof "(c)(1) Except as provided in paragraph (2), as used in this part"; and

(2) by adding at the end thereof the following new paragraph:

"(2) For purposes of subsection (a)(2), the term 'past-due support' means only past-due support owed to or on behalf of a minor child."

(d) Section 454(6) of the Social Security Act (as amended by section 3(c) of this Act) is further amended—

(1) by redesignating clause (C) as clause (D);

(2) by striking out "fee so imposed" in clause (D) as so redesignated and inserting in lieu thereof "fees so imposed"; and

(3) by striking out ", and" at the end of clause (B) and inserting in lieu thereof ", (C) a fee of not more than \$25 may be imposed in any case where the State requests the Secretary of the Treasury to withhold past-due support owed to or on behalf of such individual from a tax refund pursuant to section 464(a)(2), and";

(e)(1) Section 6402(c) of the Internal Revenue Code of 1954 is amended—

(A) by striking out "to which such support has been assigned" and inserting in lieu thereof "collecting such support"; and

(B) by inserting before the last sentence thereof the following: "A reduction under this subsection shall be applied first to satisfy any past-due support which has been assigned to the State under section 402(a)(26) or 471(a)(17) of the Social Security Act, and shall be applied to satisfy any other past-due support after any other reductions allowed by law (but before a credit against future liability for an internal revenue tax) have been made."

(2) Section 6402 of such Code (as amended by section 2653 of the Deficit Reduction Act of 1984) is further amended by redesignating subsection (g) as subsection (h), and by inserting after subsection (f) the following new subsection:

"(g) TREATMENT OF PAYMENTS TO STATES.—The Secretary may provide that, for purposes of determining interest, the payment of

any amount withheld under subsection (c) to a State shall be treated as a payment to the person or persons making the overpayment.”.

(f)(1) Section 6103(l) of such Code (as so amended) is further amended by adding at the end thereof the following new paragraph:

“(11) DISCLOSURE OF CERTAIN INFORMATION TO AGENCIES REQUESTING A REDUCTION UNDER SECTION 6402(c).—

“(A) RETURN INFORMATION FROM INTERNAL REVENUE SERVICE.—The Secretary shall, upon receiving a written request, disclose to officers and employees of a State agency seeking a reduction under section 6402(c)—

“(i) the fact that a reduction has been made or has not been made under such subsection with respect to any taxpayer;

“(ii) the amount of such reduction;

“(iii) whether such taxpayer filed a joint return;

“(iv) Taxpayer Identity information with respect to the taxpayer against whom a reduction was made or not made and of any other person filing a joint return with such taxpayer; and

“(v) the fact that a payment was made (and the amount of the payment) on the basis of a joint return in accordance with section 464(a)(3) of the Social Security Act.

“(B) RESTRICTION ON USE OF DISCLOSED INFORMATION.—Any officers and employees of an agency receiving return information under subparagraph (A) shall use such information only for the purposes of, and to the extent necessary in, establishing appropriate agency records or in the defense of any litigation or administrative procedure ensuing from a reduction made under section 6402(c).”.

(2) Section 6103(p)(3)(A) of such Code (as so amended) is further amended by striking out “or (10)” and inserting in lieu thereof “(10), or (11)”.

(3) Section 6103(p)(4) of such Code (as so amended) is further amended by striking out “or (10)” and inserting in lieu thereof “(10), or (11)”.

(4) Section 6103(p)(4)(F)(ii) of such Code (as so amended) is further amended by striking out “or (10)” and inserting in lieu thereof “(10), or (11)”.

(5) Section 7213(a)(2) of such Code (as so amended) is further amended by striking out “or (10)” and inserting in lieu thereof “(10), or (11)”.

(g) The amendments made by this section shall apply with respect to refunds payable under section 6402 of the Internal Revenue Code of 1954 after December 31, 1985.

#### WISCONSIN CHILD SUPPORT INITIATIVE

SEC. 22. (a)(1) If the State of Wisconsin requests the Secretary of Health and Human Services to waive the requirements of parts A and D of title IV of the Social Security Act, or to waive the requirements of part D and only those requirements of part A of such Act as relate to the provision of aid to dependent children as defined (without regard to section 407) in section 406(a) of the Social Security Act,



ty Act (hereafter referred to in this section as “dependent children in single-parent families”), in order to permit the State to make an adequate test in any county or counties, or throughout the State, of its Child Support Initiative, the Secretary shall waive such requirements if—

(A) the State provides a complete description, in accordance with paragraph (2), of the program, known as the Initiative, which it will operate in place of the programs under such parts A and D, and makes the description readily available to the public throughout the State;

(B) the Governor provides assurances that, under the Initiative, assistance will be provided to all children in need of financial support, and the State will continue to operate an effective child support enforcement program;

(C) the State agrees that, during the conduct of such test, it will continue to determine eligibility for medical assistance under the State plan approved under title XIX of the Social Security Act, applying the criteria (insofar as may be applicable to members of families with dependent children affected by the Initiative) in effect under its State plan approved under part A of title IV for the month preceding the month in which the Initiative (approved under this section) becomes effective, except that such criteria shall be deemed to have been changed to the extent necessary to comply with generally applicable changes in Federal law or regulations occurring after the date of the enactment of this Act;

(D) the State specifies measurable performance objectives, submits an evaluation plan (including criteria for evaluating the Initiative), and agrees to submit interim and final evaluations and reports, at such time or times and containing such information, as the Secretary may require; and

(E) the State agrees to obtain, at least once every two years, a financial and compliance audit of the funds received under this section and to obtain, after the close of the operation of the Initiative under this section, such an audit and make it public within the State on a timely basis and provide a copy to the Secretary within 30 days after its completion.

(2) The program description provided under paragraph (1)(A) shall describe in detail how the proposed Initiative will affect children and families, with specific reference to the principles for calculating benefits and establishing and enforcing child support obligations. The description shall also include estimates of cost and program effects and provide other relevant information necessary for the Secretary to determine whether the financial well-being of children and their families will be adversely affected by the operation of the Initiative.

(b) The Child Support Initiative proposed by the State of Wisconsin as detailed in the program description submitted to the Secretary, and the related requested waivers, shall become effective within 120 days after its submission unless the Secretary determines that the financial well-being of children in the State will be adversely affected by the Initiative. The Secretary shall notify the State in writing that, effective with the beginning of the following quarter (or of such later quarter as the State may select), the State



may operate its Child Support Initiative instead of its programs of aid to families with dependent children (or, if the State had so requested, instead of its program of aid to dependent children in single-parent families) and child support enforcement in such county or counties, or on a statewide basis, as the State has indicated in its request. Except as specifically provided in subsection (c), no amount will be payable for any quarter under section 403(a) (or under section 403(a) with respect to single-parent families, if the State had so requested), 455(a), or 458 of the Social Security Act with respect to such county or counties in which the Initiative is in effect.

(c)(1) For each quarter during which such program is in effect throughout the State, the Secretary will pay to the State the sum of its proportionate share (as defined in paragraph (4)(A)) of each of the following:

(A) the amount advanced by the Secretary to all the other States (as defined in section 1101(a) of the Social Security Act) for such quarter with respect to section 403(a) (1) and (2) of such Act;

(B) the amount so advanced by the Secretary with respect to section 403(a)(3) of such Act;

(C) the amount so advanced by the Secretary with respect to section 455(a) of such Act; and

(D) the amount so advanced by the Secretary with respect to section 458(a) of such Act,

reduced by so much of its proportionate share of support collections on behalf of individuals receiving aid to families with dependent children (as defined in paragraph (4)(B)) as would have been credited to the Federal Government under section 457(b) of such Act had such collections been made in the last quarter of fiscal year 1986.

(2) If in any quarter the Initiative approved under this section is in operation in fewer than all the counties in the State, the amount paid to the State with respect to the counties to which the waiver under subsection (a) applies shall equal (in lieu of the amount specified in paragraph (1)) the proportionate share with respect to the counties in which the Initiative is operated (as defined in paragraph (5)(A)) of the amount advanced to the State under the four authorities specified in paragraph (1) with respect to all the other counties for such quarter, reduced by so much of the proportionate share of support collections (as defined in paragraph (5)(B)) with respect to the counties in which the Initiative is operated, as would have been credited to the Federal Government under section 457(b) of such Act had such collections been made in the last quarter of fiscal year 1986.

(3) Payment under this subsection shall be estimated by the Secretary before the beginning of each quarter during which the Initiative is in effect on the basis of the advances made under parts A and D of title IV of the Social Security Act for such quarter, and the Secretary shall make payments for such quarter on a monthly basis (with each payment made no later than the beginning of the month involved), in the amounts so estimated, and adjusted as necessary to reflect the amount of any previously made overpayment or underpayment under this section. Payment of any amount determined with respect to paragraphs (1)(A) and (1)(B) shall be made

from amounts appropriated to carry out part A of title IV of the Social Security Act for the appropriate fiscal year; payment of any amount determined with respect to paragraphs (1)(C) and (1)(D) shall be made from amounts appropriated to carry out part D of title IV of the Social Security Act.

(4)(A) The State's proportionate share of each amount enumerated in paragraph (1) shall be the portion of such amount that bears the same ratio to such amount as the corresponding portion advanced to the State for quarters in fiscal years 1984 through 1986 bears to the total corresponding amount advanced to all the other States for such quarters.

(B) The State's proportionate share of support collections means the amount that bears the same ratio to such collections on behalf of individuals receiving aid to families with dependent children by all the other States for the quarter involved as such collections by the State for quarters in fiscal years 1984 through 1986 bear to the total of such collections by all the other States for such quarters.

(5)(A) The proportionate share with respect to the counties in which the Initiative is operated, in the case of—

(i) the amount advanced to the State with respect to all other counties under section 403(a)(1) of the Social Security Act;

(ii) the amount so advanced under section 403(a)(3) of such Act;

(iii) the amount so advanced under section 455(a) of such Act; and

(iv) the amount so advanced with respect to section 458(a) of such Act,

is the sum of such amounts, each having been multiplied by the ratio of (I) the corresponding amount advanced with respect to such counties for all quarters in fiscal years 1984 through 1986 to (II) the corresponding amount advanced with respect to all the other counties in the State for all such quarters.

(B) The proportionate share of support collections for any quarter, with respect to the counties in which the Initiative is operated, means the amount that bears the same ratio to such collections on behalf of individuals receiving aid to families with dependent children with respect to all the other counties in the State for such quarter as such collections by such counties for quarters in fiscal years 1984 through 1986 bear to the total of such collections by all the other counties in the State for such quarters.

(6) If the State requests, under subsection (a), waiver of only those requirements under part A of title IV of the Social Security Act as relate to the provision of aid to dependent children in single-parent families, and continues to operate its program of aid to families with dependent children deprived by reason of the unemployment of a parent—

(A) the State's proportionate share of the amount specified in paragraph (1)(A) (and only that amount) shall be computed under paragraph (4) by application of the ratio of (i) the amount advanced to the State, under section 403(a)(1) of the Social Security Act for quarters in fiscal years 1984 through 1986 with respect to expenditures in the form of aid to dependent children in single-parent families, to (ii) the amount ad-

vanced to all the other States, under section 403(a) (1) and (2) of such Act with respect to such expenditures, rather than by application of the ratio specified in paragraph (4); and

(B) part A of title IV of such Act shall continue to apply to the State's program of aid to families with dependent children deprived by reason of the unemployment of a parent; except that section 403(a)(3) shall not apply during the period that, or in the part or parts of the State where, the Initiative is in effect.

(d)(1) The State may cease to conduct the Initiative under this section and (if it so chooses) return to the administration of its plans approved under part A and part D of title IV of the Social Security Act upon the provision to the Secretary of at least 3 months advance notice (or such greater advance notice as may be necessary so that administration of such plans will resume at the beginning of a quarter in the fiscal year).

(2) The Secretary may terminate approval of the Initiative upon the giving of at least 3 months advance notice (or such greater advance notice as may be necessary as specified in paragraph (1)) to the State if it is determined that the financial well-being of children in the State (or county or counties involved) would be better achieved by the operation of programs under part A and part D of title IV of the Social Security Act.

(e) This section shall be in effect for quarters beginning after September 30, 1986, and ending before October 1, 1994.

SENSE OF THE CONGRESS THAT STATE AND LOCAL GOVERNMENTS SHOULD FOCUS ON THE PROBLEMS OF CHILD CUSTODY, CHILD SUPPORT, AND RELATED DOMESTIC ISSUES

SEC. 23. (a) The Congress finds that—

(1) the divorce rate in the United States has reached alarming proportions and the number of children being raised in single parent families has grown accordingly;

(2) there is a critical lack of child support enforcement, which Congress has undertaken to address through the child support enforcement program;

(3) Congress is strengthening that program to recognize the needs of all children;

(4) related domestic issues, such as visitation rights and child custody, are often intricately intertwined with the child support problem and have received inadequate consideration; and

(5) these related issues remain within the jurisdiction of State and local governments, but have a critical impact on the health and welfare of the children of the Nation.

(b) It is the sense of Congress that—

(1) State and local governments must focus on the vital issues of child support, child custody, visitation rights, and other related domestic issues that are properly within the jurisdictions of such governments;

(2) all individuals involved in the domestic relations process should recognize the seriousness of these matters to the health and welfare of our Nation's children and assign them the highest priority; and

*(3) a mutual recognition of the needs of all parties involved in divorce actions will greatly enhance the health and welfare of America's children and families.*  
 And the Senate agree to the same.

DAN ROSTENKOWSKI,  
 HAROLD FORD of Tennessee,  
 PETE STARK,  
 DONALD J. PEASE,  
 ROBERT T. MATSUI,  
 WYCHE FOWLER, Jr.,  
 BARBARA B. KENNELLY,  
 BARBER B. CONABLE, Jr.,  
 CARROLL CAMPBELL,  
 W. HENSON MOORE,  
 WILLIAM THOMAS of California,  
*Managers on the Part of the House.*

ROBERT DOLE,  
 BOB PACKWOOD,  
 WILLIAM L. ARMSTRONG,  
 CHUCK GRASSLEY,  
 RUSSELL B. LONG,  
 DANIEL PATRICK MOYNIHAN,  
 BILL BRADLEY,  
*Managers on the Part of the Senate.*



## JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4325) to assure, through mandatory income withholding, incentive payments to the States, and other improvements in the child support enforcement program, that all children in the United States who are in need of assistance in securing financial support from their parents will receive such assistance regardless of their circumstances, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

### 1. STATEMENT OF PURPOSE

#### SECTION 2

##### *Present law*

Title IV-D of the Social Security Act authorizes funds for the purpose of "enforcing the support obligations owed by absent parents to their children and the spouse (or former spouse) with whom such children are living, locating absent parents, establishing paternity, and obtaining child and spousal support . . ."

##### *House bill*

Amends present law by adding the following language: "and assuring that assistance in obtaining support will be available under this part to all children (whether or not eligible for aid under part A) for whom such assistance is requested."

*Effective date.*—On enactment.

##### *Senate amendment*

Same as House bill.

*Conference agreement*

The conference agreement follows the House bill and the Senate amendment.

## 2. REQUIRED STATE PROCEDURES

## SECTION 3

*Present law*

The Federal statute generally does not specify the types of procedures States must use in operating their programs. Sec. 454(13) requires the States to comply with such requirements and standards as the Secretary determines to be necessary to the establishment of an effective program.

*House bill*

States are required to enact laws establishing the following procedures for use in their IV-D programs.

*Senate amendment*

Similar to House bill.

*Conference agreement*

The conference agreement includes the provision that is in both the House bill and the Senate amendment requiring the States to have laws establishing specified child support enforcement procedures for use in their IV-D programs. Under the conference agreement, income withholding procedures must be used in all cases that meet the specifications set forth in this bill. However, the States need not apply certain other procedures in those cases where they determine (taking into account the payment record of the absent parent, the availability of other remedies, and other relevant considerations) that such application would be inappropriate, or would not serve the purpose of the child support program. The procedures with respect to which this State discretion is available are: State tax refund intercept, liens, posting of bond or giving security, and making available information to credit agencies.

With regard to the income withholding procedures, the conferees want to make clear their intent that individuals will not be exempt from withholding because they are employees of the Federal government. The conferees believe that section 459 of the Social Security Act will allow income withholding to be applied to Federal employees. This section provides that moneys (the entitlement to which is based on remuneration for employment) due from or payable by, the United States or the District of Columbia are subject to garnishment to the same extent as if the United States or the District of Columbia were a private person in cases involving enforcement of child support or alimony obligations.

Section 459 was added to the Social Security Act in 1975 as part of the original child support enforcement legislation specifically to assure that individuals who owe child support obligations which are being enforced in accordance with State law cannot evade their obligations simply because the payments being made to them are Federal moneys. The legislative history of this provision reflects

the explicit intention of the Congress to override prior decisions by the courts which had held that garnishment or attachment procedures involved the immunity of the United States from suits to which it had not consented.

The conferees reaffirm Congressional intent that individuals should not be exempt from enforcement of child support obligations through attachment or withholding of wages on the basis of their relationship to the Federal government. The conferees note that the current garnishment provisions are written broadly to include (with specific exceptions) all compensation paid or payable for personal services whether the compensation is denominated as wages, salary, commission, bonus pay, severance pay, sick pay, and incentive pay, and extend as well to pensions, retirement or retired pay, annuities, dependent or survivors' benefits, and other similar amounts. In view of the broad interpretation which was clearly intended by the framers of this provision, the conferees believe that there is no merit in the argument that has been raised in at least one State that an individual is immune to wage withholding for the enforcement of child support obligations on the grounds that the private company for which he is working is operating on Federal land.

#### (A) INCOME WITHHOLDING

##### *1. House bill*

In the case of each absent parent against whom a support order is or has been issued or modified in the State, the State must provide for withholding from wage income, in accordance with the conditions described below.

##### *Senate amendment*

Same as House bill.

##### *Conference agreement*

The conference agreement follows the House bill and the Senate amendment.

##### *2. House bill*

The amount withheld must be the amount of the current support order, plus amounts for arrearages and for a fee to the employer to cover the cost of withholding. The fee to the employer will be established by the State. The total amount withheld may not exceed the limits provided in sec. 303(b) of the Consumer Credit Protection Act. The limits provided in that law are 50 percent of disposable earnings in the case of an absent parent who has a second family, and 60 percent in the case of an absent parent without a second family. These limits are each increased by 5 percent (to 55 and 65) if there are arrearages with respect to a period prior to the 12-week period which ends with the beginning of the pay period involved. (The Consumer Credit Protection Act defines disposable earnings as that part of the earnings remaining after the deduction of any amounts required by law to be withheld.) The State need not withhold up to the maximum amount permitted in order to satisfy arrearages.

*Senate amendment*

Same as House bill, except States are allowed, rather than required, to provide for a fee to cover the cost to the employer of the withholding procedure. Also includes technical differences.

*Conference agreement*

The conference agreement follows the Senate amendment.

*3. House bill*

Withholding must begin the earlier of: (1) when the arrearage reaches an amount equal to one month's support payment; or (2) when an absent parent requests withholding. States may begin withholding at any earlier time.

*Senate amendment*

Same as House bill, except for technical differences.

*Conference agreement*

The conference agreement follows the Senate amendment.

*4. House bill*

Withholding must occur without amendment of the order or further action by the court. Withholding must be initiated without the necessity of any application therefore on behalf of all IV-D (both AFDC and non-AFDC) families. Families not receiving IV-D services may file an application for such services to trigger the initiation of withholding by the administering agency on their behalf.

*Senate amendment*

Same as House bill, except for technical differences.

*Conference agreement*

The conference agreement follows the Senate amendment.

*5. House bill*

Withholding must be carried out in full compliance with all procedural due process requirements of the State. The State must provide the absent parent with advance notice of withholding and the procedures to be followed if the absent parent wants to contest the action on the grounds that withholding is not proper in the case because of mistakes of fact. If the absent parent contests the withholding, the agency administering the system must determine whether the withholding will actually occur, and must notify the individual of the date on which the withholding is to begin within not more than 30 days after the provision of the advance notice.

*Senate amendment*

Same as House bill, except for technical differences.

*Conference agreement*

The conference agreement follows the Senate amendment with an amendment providing that if withholding is contested, the State must notify the non-custodial parent within no more than 45 days



whether and when such withholding will occur. If the State determines that withholding will occur, it must furnish the parent with the information that is contained in the notice it sends to the employer requiring that withholding begin. The conference agreement also clarifies that the requirement for advance notice shall not apply in the case of any State that has an income withholding system in effect on the date of enactment if such system provides on such date, and continues to provide, such procedures as may be necessary to meet due process requirements of State law.

#### *6. House bill*

The withholding system must be administered by an entity designated by the State (the IV-D agency or other public entity), and provision must be made for expeditious distribution of amounts withheld. The State may provide procedures for the collection and distribution of withheld amounts other than through a public agency or entity, so long as such procedures are publicly accountable, allow prompt distribution, and permit the keeping of records to document the payment of support.

#### *Senate amendment*

Same as House bill, except for technical differences.

#### *Conference agreement*

The conference agreement follows the Senate amendment.

#### *7. House bill*

Employers of individuals subject to withholding, upon receiving proper notice from the State to begin withholding for child support payments (which must be a separate document containing no information other than the amount to be withheld and the amount of the fee to be retained by the employer, or other information necessary for the employer to comply with the withholding order), must be: (1) required to withhold from wages and forward to the appropriate agency (or comply with State approved alternative procedures summarized above) the amount specified in the notice plus a fee paid to the employer (unless any such fee is waived by the employer); (2) allowed to combine all amounts withheld from employees for child support into one check to the appropriate agency, and otherwise simplify the withholding process; (3) held liable to the State (on behalf of the State in AFDC cases and on behalf of the obligee in non-AFDC cases) for any amount they fail to withhold; and (4) subject to a fine if an employee is discharged from employment, refused employment or subjected to disciplinary action because of withholding for child support, even if there are other withholdings for the same employee for other purposes.

#### *Senate amendment*

Same as House bill, except the State is not required to include in the notice to the employer an amount to be withheld by him as a fee to cover the cost of withholding. The amendment also provides that an employer shall not be required to vary the normal pay and disbursement cycles in order to comply with the requirement, and includes technical differences.

*Conference agreement*

The conference agreement follows the Senate amendment.

*8. House bill*

Withholding for child support payment must take priority over any legal process under State law against the same wage.

*Senate amendment*

Same as House bill.

*Conference agreement*

The conference agreement follows the House bill and the Senate amendment.

*9. House bill*

The State may extend its system of withholding to include withholding from forms of income other than wages.

*Senate amendment*

Same as House bill.

*Conference agreement*

The conference agreement follows the House bill and the Senate amendment.

*10. House bill*

The State must make such arrangements and enter into such agreements with other States as may be necessary: (1) to extend its withholding to include withholding from income derived within the State in cases where the support orders were issued in other States, and (2) to encourage the extension of the withholding systems of other States so that such systems will include withholding from income derived in those States in cases where the support orders were issued within the State.

*Senate amendment*

The State must extend its withholding system so that it will include withholding from income derived within the State in cases where the support orders were issued in other States.

*Conference agreement*

The conference agreement follows the Senate amendment.

*11. House bill*

There must be provision for terminating withholding.

*Senate amendment*

Same as House bill.

*Conference agreement*

The conference agreement follows the House bill and the Senate amendment.

### *12. House bill*

All child support orders issued or modified in the State after October 1, 1985 must include provision for withholding of wages if arrearages occur. Withholding must be applied under the conditions and procedures established by the State for cases that are not IV-D cases, and in accordance with the requirements and procedures summarized above for IV-D cases.

#### *Senate amendment*

No provision.

#### *Conference agreement*

The conference agreement follows the House bill.

### *13. House bill*

For purposes of the income withholding provision, defines "wages" as all cash remuneration for employment, determined without regard to any exclusions from or limitations on such term (or the term "employment") which may be applicable under other provisions of the Social Security Act or under other Federal, State, or local laws.

#### *Senate amendment*

No provision.

#### *Conference agreement*

The conference agreement gives the States the authority to define wages.

## (B) EXPEDITED PROCEDURES

### *House bill*

States must make reasonable efforts to expedite and otherwise improve the establishment of, compliance with, and enforcement of child support obligations and any related obligations arising under or in connection with the support orders involved.

#### *Senate amendment*

Requires States to have in effect expedited processes within the State judicial system for establishing paternity and obtaining and enforcing child support orders. Decisions or recommendations resulting from the expedited process must be reviewed (i.e., ratified, modified, or remanded) by judges of the court. In addition, appellate review of child support decisions or actions resulting from the expedited processes would be conducted by the regular court system at the request of either party.

The Secretary would have authority to waive expedited procedures in political subdivisions of States due to variations within States in the effectiveness and timeliness of current processes. Jurisdictions that use administrative processes would qualify for a waiver on the same basis as State or political subdivisions using regular court processes.

### *Conference agreement*

The conference agreement mandates that the States use expedited processes, but allows them to determine whether they are under the judicial system or administrative processes. States are permitted but not required to include paternity establishment in their expedited process. The Secretary may waive the requirement for political subdivisions within a State as provided in the Senate amendment. The managers intend that States shall adopt judicial or administrative changes as needed to expedite the processing of child support actions. It is not intended that the Secretary be authorized to specify the particular administrative or judicial structures to be adopted by the States. Rather, it is intended that the Secretary should measure a State's compliance with this provision primarily on the basis of the results it produces. A State will not be out of compliance if it is achieving appropriate results or is in the process of implementing changes which are reasonably designed to bring about such results.

#### (C) STATE INCOME TAX REFUND OFFSETS

##### *1. House bill*

Requires States, at the request of the State IV-D agency, to withhold from any tax refund otherwise payable amounts of past-due support owed by an absent parent for the benefit of an AFDC child, or, at the option of the State, any child who is receiving IV-D services. Provision must be made for withholding for interstate cases.

##### *Senate amendment*

Similar to House bill, but also requires the State to withhold amounts owed on behalf of a child who is not receiving AFDC and allows the State to withhold a fee to cover the costs of collection. The amendment requires notice of the absent parent's home address and social security number to the State agencies that request and enforce the order, and includes technical differences.

##### *Conference agreement*

The conference agreement follows the Senate amendment.

##### *2. House bill*

Requires notice to the absent parent of the proposed reduction and the procedures to be followed to contest the action. Procedures must be in compliance with due process procedures of the State.

##### *Senate amendment*

Same as House bill, except for technical differences.

##### *Conference agreement*

The conference agreement follows the Senate amendment.

#### (D) LIENS AGAINST PROPERTY

##### *House bill*

Requires States to have procedures for imposing liens against real and personal property for amounts of past-due support owed



by a State resident or an individual who owns property in the State.

*Senate amendment*

Same as House bill, but limited to cases where the States find the procedure appropriate. The amendment includes technical differences.

*Conference agreement*

The conference agreement follows the Senate amendment with an amendment deleting the reference to "appropriate" cases. Discretion not to apply the procedure when the State determines that it is inappropriate is provided in the more general discretionary authority which is included in the conference agreement as described above (under the heading "Required State Procedures").

(E) PATERNITY STATUTE OF LIMITATIONS

*House bill*

State paternity laws must permit the establishment of paternity until a child's 18th birthday.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill.

(F) SECURITY OR BOND IN CERTAIN CASES

*House bill*

Requires States to have procedures to require in appropriate cases that an individual give security, post a bond, or give some other type of guarantee to secure support obligations of absent parents who have a pattern of past-due support. There must be notice to the individual of the proposed requirement including the procedures to be followed to contest the action. Procedures must be in compliance with due process procedures of the State.

*Senate amendment*

Same as House bill, except for technical differences.

*Conference agreement*

The conference agreement follows the Senate amendment with an amendment deleting the reference to "appropriate cases." Discretion not to apply the procedure when the State determines that it is inappropriate is provided in the more general discretionary authority which is included in the conference agreement as described above (under the heading "Required State Procedures").

(G) PROVIDING INFORMATION ON OVERDUE SUPPORT TO CREDIT  
AGENCIES

*House bill*

Requires States to make available to consumer credit bureau organizations, at the request of such agencies, the amount of past-due support owed by absent parents residing in the State. States must make available information on arrearages of \$1,000 or more, and may make available information on smaller arrearages. An individual must be notified of the proposed action and given reasonable opportunity to contest the accuracy of the information involved. The notification and procedures for contesting the proposed release of information to credit agencies must be in compliance with the due process procedures in the State. The State may charge a fee to the credit agencies who request and receive this information which cannot exceed the cost to the State of providing the information.

*Senate amendment*

Same as House bill except for technical differences.

*Conference agreement*

The conference agreement follows the Senate amendment.

(H) TRACKING AND MONITORING OF SUPPORT PAYMENTS BY PUBLIC  
AGENCY

*House bill*

The State must provide that, at the request of either the custodial or absent parent, child support payments must be made through the agency that administers the State's income withholding system regardless of whether there is an arrearage which requires withholding to occur. The State must charge a fee equal to the cost incurred by the State for these services, up to a maximum of \$25 a year.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill with an amendment making the provision optional with the State.

(I) NOTIFICATION TO AFDC RECIPIENT OF SUPPORT COLLECTED

*House bill*

No provision.

*Senate amendment*

States are required to notify each AFDC recipient, at least once each year, of the amount of child support collected on behalf of that recipient.

*Conference agreement*

The conference agreement follows the Senate amendment.

## (J) DEFINITIONS

*House bill*

For purposes of the provisions dealing with State income tax refund offsets (c), liens (d), security/bond (f), and information for consumer credit agencies (g), the term "past-due support" is defined as meaning the amount of a delinquency, determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a child, or of a child and the parent with whom the child is living.

*Senate amendment*

For purposes of the provisions dealing with State income tax refund offsets (c), liens (d), security/bond (f), and information for consumer credit agencies (g), the term "overdue support" is defined as meaning the amount of a delinquency (which has continued for such minimum period of time as established by the Secretary) pursuant to an obligation determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a minor child, which is owed to or on behalf of a minor child. At the option of the State, overdue support may include spousal support (in specified circumstances) and may include amounts which are owed to or on behalf of a child who is not a minor child.

*Conference agreement*

The conference agreement follows the Senate amendment with modifications to strike the Secretary's authority to establish the minimum period of time, and to require the collection of spousal support if the State is otherwise required to collect spousal support as provided under sec. 12 of the conference agreement.

## (K) EXEMPTION AUTHORITY

*House bill*

The Secretary may grant an exemption, subject to later review, of the required procedures, if the State can demonstrate that such procedures will not improve the efficiency and effectiveness of the State IV-D program.

*Senate amendment*

Same as House bill. (Does not apply to provision (I) relating to notice to AFDC recipients.)

*Conference agreement*

The conference agreement follows the Senate amendment.

## (L) EFFECTIVE DATE

*House bill*

October 1, 1985.

*Senate amendment*

October 1, 1984. If a State agency administering a plan approved under part D of title IV of the Social Security Act demonstrates, to the satisfaction of the Secretary of Health and Human Services, that it cannot, by reason of State law, comply with the requirements of a provision mentioned above, the Secretary may prescribe that the provision will become effective beginning with the fourth month beginning after the close of the first session of such State's legislature ending on or after October 1, 1984.

*Conference agreement*

The conference agreement provides for an effective date of October 1, 1985 and provides that if a State cannot, by reason of State law, comply with the requirement of a provision mentioned above, the Secretary may waive the requirement of such provision until the beginning of the fourth month beginning after the close of the first session of such State's legislature ending on or after October 1, 1985.

## 3. FEDERAL MATCHING OF ADMINISTRATIVE COSTS

## SECTION 4

*Present law*

The Federal Government pays 70 percent of State and local administrative costs for child support enforcement services to both Aid to Families with Dependent Children (AFDC) and non-AFDC families, on an open-end entitlement basis.

*House bill*

Retains present law.

*Senate amendment*

Reduces the Federal matching rate as follows:

- Fiscal year 1987 to 69 percent
- Fiscal year 1988 to 68 percent
- Fiscal year 1989 to 67 percent
- Fiscal year 1990 to 66 percent
- Fiscal year 1991 to 65 percent

*Conference agreement*

The conference agreement provides for Federal matching of administrative costs as follows:

- 70 percent for fiscal years 1984, 1985, 1986 and 1987
- 68 percent for fiscal years 1988 and 1989
- 66 percent for fiscal year 1990 and years thereafter.



## 4. FEDERAL INCENTIVE PAYMENTS

## SECTION 5

*Present law*

A 12 percent incentive payment (financed out of the Federal share of collections) is made to States and localities for collections made on behalf of AFDC families.

*1. House bill*

Repeals the 12% incentive payment, effective October 1, 1985.

Establishes new incentives based on collections on behalf of both AFDC and non-AFDC families. Requires the Secretary to make incentive payments as follows:

The basic incentive payment is equal to 4% of the State's AFDC collections, and 4% of its non-AFDC collections (subject to the cap described below).

To the extent AFDC or non-AFDC collections equal or exceed combined administrative costs for both AFDC and non-AFDC, higher incentives will be paid on a sliding scale up to 10% each of non-AFDC and AFDC collections, according to the following cost/collection ratios:

*AFDC incentive*

Ratio of AFDC collections to combined AFDC/non-AFDC administrative costs:		Incentive equal to this percent of AFDC collections
1.0:1 .....		5.0
1.1:1 .....		5.5
1.2:1 .....		6.0
1.3:1 .....		6.5
1.4:1 .....		7.0
1.5:1 .....		7.5
1.6:1 .....		8.0
1.7:1 .....		8.5
1.8:1 .....		9.0
1.9:1 .....		9.5
2.0:1 .....		10.0

*Non-AFDC incentive*

Ratio of non-AFDC collections to combined AFDC/non-AFDC administrative costs:		Incentive equal to this percent of non-AFDC collections
1.0:1 .....		5.0
1.1:1 .....		5.5
1.2:1 .....		6.0
1.3:1 .....		6.5
1.4:1 .....		7.0
1.5:1 .....		7.5
1.6:1 .....		8.0
1.7:1 .....		8.5
1.8:1 .....		9.0
1.9:1 .....		9.5
2.0:1 .....		10.0

The total dollar amount of the incentive paid for non-AFDC collections is capped at an amount equal to 125% of the State's incentive payment for AFDC collections.

#### *Senate amendment*

Repeals the 12% incentive payment, effective October 1, 1985.

Establishes new incentives based on collections on behalf of both AFDC and non-AFDC families. Requires the Secretary to make incentive payments as follows:

The basic incentive is 6% of collections. Above 6%, incentives are paid according to the following cost/collection ratios:

#### *AFDC incentive*

		<i>Incentive equal to this percent of AFDC collections</i>
Ratio of AFDC collections to combined AFDC/non-AFDC administrative costs:		
1.4:1 .....		6.5
1.6:1 .....		7.0
1.8:1 .....		7.5
2.0:1 .....		8.0
2.2:1 .....		8.5
2.4:1 .....		9.0
2.6:1 .....		9.5
2.8:1 .....		10.0

#### *Non-AFDC incentive*

		<i>Incentive equal to this percent of AFDC collections</i>
Ratio of non-AFDC collections to combined AFDC/non-AFDC administrative costs:		
1.4:1 .....		6.5
1.6:1 .....		7.0
1.8:1 .....		7.5
2.0:1 .....		8.0
2.2:1 .....		8.5
2.4:1 .....		9.0
2.6:1 .....		9.5
2.8:1 .....		10.0

The incentive paid for non-AFDC collections is capped at an amount equal to 100% of the incentive for AFDC collections.

#### *Conference agreement*

The conference agreement follows the Senate amendment with an amendment providing that the incentive paid for non-AFDC collections will be capped at an amount equal to 100% of the incentive for AFDC collections in fiscal years 1986 and 1987, 105% in fiscal year 1988, 110% in fiscal year 1989, and 115% in fiscal year 1990 and any fiscal year thereafter. The agreement also provides that for fiscal year 1985, the amount of the AFDC incentive will be calculated on the basis of AFDC collections without regard to the provision added by the Deficit Reduction Act of 1984 that requires that the first \$50 collected on behalf of an AFDC family in any month must be paid to the family without reducing the amount of the AFDC payment to the family.

## *2. House bill*

At State option, the laboratory costs of determining paternity may be deducted from combined administrative costs for purposes of computing incentive payments.

### *Senate amendment*

Same as House bill.

### *Conference agreement*

The conference agreement follows the House bill and the Senate amendment.

## *3. House bill*

Under a pass-through requirement, States must assure that localities which participate in the costs of collecting support will receive an appropriate share of any incentive payments, as determined by the Secretary.

### *Senate amendment*

Requires the States to develop their own criteria for passing through incentives to localities, taking into account efficiency and effectiveness of local programs.

### *Conference agreement*

The conference agreement follows the Senate amendment.

## *4. House bill*

Incentive funds must be estimated and projected on an annual basis so that States will know in advance what their payments will be.

Amounts collected in interstate cases will be credited, for purposes of computing incentive payments, to both initiating and responding States.

### *Senate amendment*

Same as House bill.

### *Conference agreement*

The conference agreement follows the House bill and the Senate amendment.

## *5. House bill*

*Effective date.*—October 1, 1985. However, for fiscal year 1986 only, States will receive the higher of the amount due them under the new incentive provision or 80 percent of what they would have received under the existing 12 percent incentive program.

### *Senate amendment*

Same as House bill, except for fiscal year 1986 and fiscal year 1987, a State is eligible to receive the higher of the amount due it under the new incentive and match provisions or 80 percent of what it would have received under the existing 12 percent incentive formula and 70 percent match.

*Conference agreement*

The conference agreement follows the Senate amendment.

# 5. NINETY PERCENT MATCHING FOR AUTOMATED MANAGEMENT SYSTEMS USED IN INCOME WITHHOLDING AND OTHER REQUIRED PROCEDURES

## SECTION 6

*Present law*

Ninety percent Federal matching is available, on an open-end entitlement basis, to States that elect to establish an automatic data processing and information retrieval system designed to assist management in the administration of the State plan, so as to control, account for, and monitor all the factors in the support enforcement collection and paternity determination process. Funds may be used to plan, design, develop, and install or enhance the system. The Secretary must approve the system as meeting specified conditions before matching is available.

*House bill*

Maintains present law. In addition, specifies that if a State meets the requirements in present law, matching funds may be used for the development and improvement of the income withholding and other procedures required in the bill (described in item 2) through the monitoring of child support payments, the maintenance of accurate records regarding the payment of child support, and the provision of prompt notification to appropriate officials with respect to any arrearages that occur.

Also specifies that the 90 percent matching is available to pay for the acquisition of computer hardware.

*Effective date.*—First quarter after enactment.

*Senate amendment*

Same as House bill, except for technical differences and an effective date of October 1, 1984.

*Conference agreement*

The conference agreement follows the Senate amendment.

## 6. FEES FOR SERVICES

## SECTION 3

*Present law**(a) Application fee*

States have the option of charging an application fee for furnishing services to non-AFDC families. The fee must be reasonable, as determined under regulations of the Secretary. Currently the maximum allowable fee is \$20 (to be paid by the custodial parent) unless the State has a fee schedule based on each applicant's income. In the latter case, the schedule must be designed so as not to discourage applications by those most in need of services.



*(b) Additional costs*

In addition, a State may at its option recover costs in excess of the fee. Such recovery may be from either the custodial parent or the absent parent. If a State chooses to make recovery from the custodial parent, it must have in effect a procedure whereby all persons in the State who have authority to order support are informed that such costs are to be collected from the custodial parent.

*(c) Late payment fee*

No provision.

*House bill**(a) Application fee*

Retains present law.

*(b) Additional costs*

Retains present law.

*(c) Late payment fee*

No provision.

*Senate amendment**(a) Application fee*

States are required to charge an application fee for non-AFDC cases. The fee may not exceed \$25, but, beginning in fiscal year 1986, the Secretary may adjust the maximum allowable fee amount to reflect changes in administrative costs. The State may charge the fee against the custodial parent or pay the fee out of its own funds. The State may also recover the fee from the absent parent. Additionally, the State may vary the amount of the fee to reflect ability to pay. (If the State pays the fee from its own funds, the payment may not be considered an administrative cost for purposes of federal matching.)

*(b) Additional costs*

Retains present law.

*(c) Late payment fee*

States must have in effect a law under which a late payment fee is charged to the absent parents of AFDC and non-AFDC families on support that is overdue. The fee must be a uniform amount established by the State equal to 3 to 10 percent of the overdue support owed for months beginning the month following the enactment of the bill. The State may not take any action which would have the effect, directly or indirectly, of reducing the support paid to the child and may collect the fee only after the full amount of the overdue support has been paid to the child.

*Effective date.*—October 1, 1984.

### *Conference agreement*

The conference agreement follows the Senate amendment with several modifications. States are required to charge an application fee as proposed by the Senate but the managers wish to clarify that the HHS secretary's authority to adjust the fee beginning in FY 86 pertains only to the maximum allowable fee. The conference agreement also establishes a late payment fee that is optional to the States and limits the fee to between 3 and 6 percent. States may provide for these fees to be retained by the jurisdiction making the collection. In such a case, the collecting jurisdiction would be able to utilize the income generated by the fees to cover enforcement costs not otherwise funded by the State. To the extent such costs were met from the fees, they would not be subject to matching.

## 7. CONTINUATION OF SERVICES FOR FAMILIES THAT LOSE AFDC ELIGIBILITY

### SECTION 7

#### *Present law*

There is no special provision requiring States automatically to continue support collection activities on behalf of families when they lose eligibility for AFDC.

#### *House bill*

States must provide that AFDC recipients whose eligibility for AFDC is terminated due to the receipt of (or an increase in) child support payments or for other reasons will be automatically transferred from AFDC to non-AFDC status under the State IV-D program, without requiring reapplication or the payment of an application fee; and will be provided child support enforcement services on the same basis and under the same conditions as other non-AFDC cases.

*Effective.*—October 1, 1985.

#### *Senate amendment*

Same as House bill, except for technical differences. The effective date is October 1, 1984.

#### *Conference agreement*

The conference agreement follows the House bill, but with an amendment providing for the effective date in the Senate amendment.

## 8. SPECIAL PROJECT GRANTS TO PROMOTE IMPROVEMENTS IN INTERSTATE ENFORCEMENT

### SECTION 8

#### *Present law*

There is no special provision for funding of interstate enforcement activities.

### *House bill*

Beginning with fiscal year 1985, authorizes an appropriation of \$15 million a year to be used by the Secretary to fund special projects developed by States with the objective of using innovative techniques or procedures for, and otherwise improving, child support collections in interstate cases. (Report language makes clear Congressional intent that these special funds should be used by a State to augment and not supplant existing State efforts with respect to interstate cases.)

### *Senate amendment*

Same as House bill, except authorizes \$5 million for fiscal year 1985, \$10 million for fiscal year 1986, and \$15 million for fiscal year 1987 and years thereafter. (Senate report includes language similar to that in the House report.)

### *Conference agreement*

The conference agreement follows the House bill with an amendment authorizing \$7 million in fiscal year 1985, \$12 million in fiscal year 1986, and \$15 million in fiscal year 1987 and years thereafter.

## 9. PERIODIC REVIEW OF EFFECTIVENESS OF STATE PROGRAMS; MODIFICATION OF PENALTY

### SECTION 9

#### *Present law*

The Director of the Office of Child Support Enforcement is required to conduct an annual audit of each State's child support enforcement program to determine whether it complies with the requirements of the Federal statute. If he finds that the State has failed to have an effective program meeting the specified requirements, the amount of the Federal matching payments to the State under the AFDC program must be reduced by 5 percent. This penalty has never been imposed. Legislation has periodically been enacted to suspend its implementation.

#### *House bill*

The present audit and penalty requirements are modified as follows:

The Secretary is required to conduct a review of each State's program at least every 3 years to determine whether the program substantially complies with the requirements of the statute, and to evaluate its effectiveness in carrying out the purposes of the Federal child support law.

If the Secretary finds that a State has not met the requirements of the law, and there has not been corrective action to bring about substantial compliance, the amount of the State's AFDC matching must be reduced by not more than 2 percent, or, if the finding is the second consecutive such finding, not more than 3 percent, or, if the finding is the third or subsequent consecutive such finding, not more than 5 percent. The reduction must continue until the first

quarter throughout which the program is found to meet the requirements.

*Effective date.*—October 1, 1983.

#### *Senate amendment*

The present audit and penalty requirements are modified as follows:

The Director of the Federal Office of Child Support Enforcement is required to conduct audits at least every three years to determine whether the standards and requirements prescribed by law and regulation have been met. Under the penalty provision, a State's AFDC matching funds must be reduced by an amount equal to at least 1 but no more than 2 percent for the first failure to comply substantially with the standards and requirements, at least 2 but no more than 3 percent for the second consecutive failure, and at least 3 but not more than 5 percent for the third and any subsequent consecutive failures.

Annual audits would be required unless a State is in substantial compliance. If a State is not in substantial compliance, the penalty may be suspended, but only if the State is actively pursuing a corrective action plan which can be expected to bring the State into substantial compliance on a specific and reasonable timetable. A State which is not in full compliance would be determined to be in substantial compliance only if the Secretary determines that any noncompliance is of a technical nature which does not adversely affect the performance of the child support enforcement program.

*Effective date.*—October 1, 1983.

#### *Conference agreement*

The conference agreement follows the Senate amendment with several modifications: (1) audits are to be performed on the basis of substantial compliance as defined in the Senate amendment; (2) the Secretary of HHS is required to approve State corrective action plans designed to achieve substantial compliance; and (3) the Secretary may suspend penalties to allow States to implement approved corrective action plans. If at the end of the corrective action period substantial compliance has been achieved, no penalty would be due. If substantial compliance has not been achieved, penalties would begin at the end of the corrective action period if the State has implemented the corrective action plan.

### 10. EXTENSION OF SEC. 1115 DEMONSTRATION AUTHORITY TO CHILD SUPPORT ENFORCEMENT

#### SECTION 10

##### *Present law*

Sec. 1115 of the Social Security Act authorizes the Secretary to grant waivers to States in the operation of their AFDC and medic-aid programs, if he determines that the waivers are necessary to enable the States to conduct experimental, pilot, or demonstration projects which are likely to assist in promoting the objective of the programs.



*House bill*

Expands the sec. 1115 demonstration authority to include the child support enforcement program under the following conditions: (a) the intent of the requested waiver must be to test modifications that will improve the financial well-being of children; (b) a waiver will not be allowed for any modification that would disadvantage children in need of support; and (c) the requested waiver will not result in an increase in Federal AFDC costs.

*Effective date.*—On enactment.

*Senate amendment*

Same as House bill, except also allows demonstrations that are intended to improve the operation of the program, so long as the conditions described in (b) and (c) of the House bill are met.

*Conference agreement*

The conference agreement follows the Senate amendment. The conferees express concern about protecting children who may be affected by these child support demonstration projects. It is the intention of the conferees that any children involved in the demonstrations will not be disadvantaged financially or otherwise.

# 11. CHILD SUPPORT ENFORCEMENT FOR CERTAIN CHILDREN IN FOSTER CARE

## SECTION 11

*Present law*

There is no specific authority in the law for collection of child support on behalf of children who are placed in foster care. This authority was deleted when the foster care program was transferred from the title IV-A to title IV-E.

*House bill*

Requires State child support agencies to undertake child support collections on behalf of children receiving foster care maintenance payments under title IV-E of the Social Security Act, if an assignment of rights to support to the State has been secured by the foster care agency.

Requires States to take steps, where appropriate, to secure an assignment to the State of any rights to support on behalf of each child receiving foster care maintenance payments under the title IV-E foster care program.

*Effective date.*—October 1, 1983.

*Senate amendment*

Same as House bill, but with an effective date on enactment.

*Conference agreement*

The conference agreement follows the House bill and the Senate amendment, but with an effective date of October 1, 1984.

## 12. ENFORCEMENT WITH RESPECT TO BOTH CHILD AND SPOUSAL SUPPORT

### SECTION 12

#### *Present law*

At the option of the State, child support enforcement services may include the enforcement of spousal support, but only if a support obligation has been established with respect to the spouse, and the child and spouse are living in the same household.

#### *House bill*

Collection by the State of spousal support under the specified circumstances is required, rather than allowed.

#### *Senate amendment*

No provision.

#### *Conference agreement*

The conference agreement follows the House bill with an amendment clarifying that the provisions in current law and the House bill apply only where child support is being collected along with spousal support.

## 13. MODIFICATIONS IN CONTENT OF SECRETARY'S ANNUAL REPORT

### SECTION 13

#### *Present law*

Within 3 months after the close of each fiscal year, the Secretary must submit an annual report to the Congress on child support program activities. The statute specifies certain data which must be included in the report.

#### *House bill*

The information required to be included in the annual report is modified to include the following information by State:

- (1) the number of AFDC and non-AFDC cases in which there are preexisting or newly established support obligations, the amount of those obligations, the number of such cases with collections and the amount collected;
- (2) the number of cases with support obligations in which 33-66 percent, under 33 percent and 0 percent was paid; and
- (3) data regarding interstate collection.

Effective for reports due beginning with fiscal year 1987.

#### *Senate amendment*

Modifies the present reporting requirements to require the following information by State:

- (1) the total number of cases in which a support obligation has been established in the past year and the total amount of such obligations for these cases;

(2) the total number of cases in which a support obligation has been established and the total amount of such obligations for these cases;

(3) those cases described in (1) in which support was collected during such fiscal year and the total amount of such collections; and

(4) those cases described in (2) in which support was collected during such fiscal year and the total amount of such collections.

Additionally, the annual report must include information on the child support cases filed and the collections made in each State on behalf of children residing in another State or cases against parents residing in another State.

Finally, the annual report must detail how much in administrative costs is spent in each functional category (including paternity) of expenditures. The information is to be separately stated for current and for past AFDC cases and non-AFDC cases.

Effective for reports due beginning with fiscal year 1986.

#### *Conference agreement*

The conference agreement follows the Senate amendment.

### 14. REQUIREMENT TO PUBLICIZE THE AVAILABILITY OF CHILD SUPPORT SERVICES

#### SECTION 14

#### *Present law*

No provision.

#### *House bill*

States must frequently publicize, through public service announcements and other means, the availability of child support enforcement services, together with information as to the application fee for such services, if any, and a telephone number or postal address to be used to obtain additional information.

*Effective date.*—October 1, 1985.

#### *Senate amendment*

No provision.

#### *Conference agreement*

The conference agreement follows the House bill with an amendment limiting the requirement to public service announcements. The announcements may be made using radio, television, newspapers, or such other media as the State determines appropriate.

### 15. STATE COMMISSIONS ON CHILD SUPPORT

#### SECTION 15

#### *Present law*

No provision.

*House bill*

The Governor of each State is required to appoint a State Commission on Child Support. The Commission must include representation from all aspects of the child support system including custodial and non-custodial parents, the IV-D agency, the judiciary, the governor, the legislature, child welfare and social services agencies, and others.

Each State commission is to examine the functioning of the State child support system with regard to securing support and parental involvement for both AFDC and non-AFDC children, including but not limited to such specific problems as: (1) visitation; (2) establishment of appropriate objective standards for support; (3) enforcement of interstate obligations; and (4) additional Federal and State legislation needed to obtain support for all children.

The commissions shall submit to the Governor and make available to the public, reports on their findings and recommendations no later than October 1, 1985.

Costs of operating the commissions will be eligible for Federal matching only in the case of costs for transportation within the State and such other costs as are specifically allowed by the Secretary in regulations.

The Secretary may waive the requirement for a commission at the request of a State if he determines that the State has in place objective standards for child support obligations, has had a commission or council within the last five years, or is making satisfactory progress toward fully effective child support enforcement.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill with an amendment eliminating Federal matching for costs.

# 16. REQUIREMENT TO INCLUDE MEDICAL SUPPORT AS PART OF ANY CHILD SUPPORT ORDER

## SECTION 16

*Present law*

There is no provision in the child support statute that requires State agencies to undertake efforts to include medical support as part of any child support order. On August 4, 1983 the Secretary issued a notice of proposed rule-making proposing to require IV-D agencies to petition to include medical support orders in situations in which coverage is available to the absent parent at reasonable cost.

*House bill*

The Secretary of Health and Human Services is required to issue regulations to require State agencies to petition to include medical support as part of any child support order whenever health care coverage is available to the absent parent at a reasonable cost. The regulations must also provide for improved information exchange



between the State IV-D agencies and the medicaid agencies with respect to the availability of health insurance coverage.

*Effective date.*—On enactment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill. The conferees wish to point out that while they have approved a four-month Medicaid extension, as discussed later in this report, the conferees believe the best long run solution to achieving medical insurance coverage for all families is the use of private medical insurance which is or can be made available through a parent's employer.

The conferees direct the Secretary of HHS to examine additional administrative, regulatory and legislative possibilities to fully and vigorously use this private coverage, and report to the Finance Committee and the Ways and Means Committee by January 1, 1986 on actions taken.

## 17. INCREASED AVAILABILITY OF FEDERAL PARENT LOCATOR SERVICE TO STATE AGENCIES

### SECTION 17

*Present law*

The Federal statute requires operation by the Federal Government of a Parent Locator Service (PLS) to assist States in locating absent parents. States may use the Federal PLS only after there has been a determination that the absent parent cannot be located through procedures under the control of the State child support agency.

*House bill*

Repeals the requirement that the States, in effect, exhaust all State child support locator resources before they may request the assistance of the Federal PLS.

*Effective date.*—On enactment.

*Senate amendment*

Same as House bill.

*Conference agreement*

The conference agreement follows the House bill and the Senate amendment.

## 18. GUIDELINES FOR CHILD SUPPORT AWARDS

### SECTION 18

*Present law*

The IV-D statute includes no requirement that States establish guidelines to be considered in determining support orders.

*House bill*

No provision. (See item on State Commissions.)

*Senate amendment*

Requires each State to establish guidelines for child support awards within the State. The guidelines may be established by law or by judicial or administrative action. They must be made available to all judges and others who have the power to determine child support awards, but need not be binding upon them. The Secretary must provide technical assistance to the States in establishing the guidelines.

*Effective date.*—October 1, 1986.

*Conference agreement*

The conference agreement follows the Senate amendment with a modification making the provision effective October 1, 1987. Although the provision does not require that guidelines for support awards be established before October 1, 1987, States are encouraged to begin their consideration of appropriate guidelines as soon as possible.

## 19. AVAILABILITY OF SOCIAL SECURITY NUMBERS

## SECTION 19

*Present law*

Child support agencies have access to certain types of information through the Federal Parent Locator Service and the Internal Revenue Service. The Secretary of HHS, through the Parent Locator Service, is authorized to furnish the agencies with the most recent address and place of employment of absent parents. The Secretary of the Treasury is authorized to release certain wage, income tax, and return information to Federal, State and local child support enforcement agencies if needed by such agencies for purposes of the child support enforcement program. Neither Secretary is authorized to release the absent parent's social security number.

*House bill*

No provision.

*Senate amendment*

Provides for the disclosure of the absent parent's social security number to child support agencies both through the Parent Locator Service and by the Secretary of the Treasury.

*Conference agreement*

The conference agreement follows the Senate amendment.

## 20. EXTENSION OF MEDICAID ELIGIBILITY WHEN SUPPORT COLLECTION RESULTS IN TERMINATION OF AFDC ELIGIBILITY

### SECTION 20

#### *Present law*

When a family loses eligibility for AFDC as a result of child support collections, it also loses categorical eligibility for medicaid.

#### *House bill*

If a family loses AFDC eligibility as the result (wholly or partly) of increased collection of support payments under the IV-D program, the State must continue to provide medicaid benefits for 4 calendar months beginning with the month of ineligibility.

(The family must have received AFDC in at least three of the six months immediately preceding the month of ineligibility.)

*Effective date.*—On enactment.

#### *Senate amendment*

Retains present law.

#### *Conference agreement*

The conference agreement follows the House bill, but with an amendment limiting the application of the provision to families becoming ineligible for AFDC before October 1, 1988.

## 21. COLLECTION OF PAST-DUE SUPPORT FROM FEDERAL TAX REFUNDS

### SECTION 21

#### *Present law*

Upon receiving notice from a State child support agency that an individual owes past-due support which has been assigned to the State as a condition of AFDC eligibility, the Secretary of the Treasury is required to withhold from any tax refunds due that individual an amount equal to any past-due support. The withheld amount is sent to the State agency, together with notice of the taxpayer's current address. The Secretary of the Treasury is required to issue regulations, approved by the Secretary of Health and Human Services, prescribing the timing and content of notices by the States. States are required to reimburse the Federal Government for the cost of the procedure.

The amount currently being charged the States for each case that is being offset is \$11.00. This will be reduced to \$3.20 for cases processed in 1985.

"Past-due support" is defined as the amount of a delinquency determined under court order or order of an administrative process established under State law for support and maintenance of a child or a child and the parent with whom the child is living.

Under present procedures, the State agency, or, at the option of the State, the Federal Office of Child Support Enforcement, must give an individual prior notice that the offset will occur, and the individual may contest the action with the State agency. In addition, the Internal Revenue Service must provide the taxpayer with



a notice, concurrent with the offset, of the amount of the offset and of the State to which it has been paid.

*House bill*

No provision.

*Senate amendment*

Extends the present system for withholding past-due support from Federal tax refunds to absent parents of non-AFDC minor children, as follows:

State child support agencies will be required to submit to the IRS for withholding, the names of absent parents who owe past-due support to whom the withholding procedures may be applied. These must be limited to cases where there are arrearages of \$500 or more, and which, on the basis of current payment patterns and the enforcement efforts that have been made, the State agency determines are unlikely to be paid before the offset occurs. In addition, States may limit arrearages which they submit to the IRS to amounts that have accrued since the State undertook to collect support for the non-AFDC family.

Once a State agency has determined that the name of an absent parent will be submitted to the IRS, it must send notice to that absent parent of the proposed offset, including the procedures to be followed in contesting the proposed offset. The notice must also inform the absent parent and spouse, if any, of the procedures which may be taken to protect the unobligated spouse's portion of the refund.

If, on the basis of the information provided by the State child support agency (through the Department of Health and Human Services), the IRS determines that an income tax refund must be withheld to pay past-due support, the IRS must provide the taxpayer with notice, concurrent with offset, of the amount of the offset and of the State to which it has been paid so that any questions which the taxpayer may have about the child support obligation may be addressed to the appropriate State child support agency. The IRS notice must also inform the taxpayer that, in the case of a joint return where both spouses had income the spouse who is not liable for the past-due obligation may file an amended tax form to recover the unobligated spouse's portion of the amount that was withheld. If the unobligated spouse subsequently files an amended return to secure his or her proper share of a refund, the IRS must pay that share to the individual.

Amounts of refunds withheld by the IRS will be sent to the State child support agency that submitted the name for offset, so that they can in turn be paid to the family that is owed the past-due support. It is expected that generally the State agency will make prompt payment to the families involved. However, if the IRS informs the State agency that the absent parent has filed a joint return, and therefore the possibility exists that the unobligated spouse may file an amended return to claim his or her share of the return, the State agency will be authorized to delay payment to the family that is owed past-due support for a period of up to six months, or (if earlier) until the unobligated spouse has been paid the proper share of the refund.



The IRS may charge the State a fee of up to \$25 for processing each non-AFDC case submitted. The State may in turn require that a fee of up to \$25 be paid by the family requesting offset. This user fee is intended to defray costs incurred by the IRS and the State in processing the non-AFDC cases and in meeting the notice requirements.

*Effective date.*—Effective for refunds payable after December 31, 1985.

### *Conference agreement*

The conference agreement follows the Senate amendment, but limits the provision to apply to refunds payable after December 31, 1985 and before January 1, 1991.

## 22. WISCONSIN CHILD SUPPORT INITIATIVE

### SECTION 22

#### *Present law*

Although the Social Security Act allows the Secretary to waive certain requirements of the AFDC program for purposes of demonstration programs, there may not be authority broad enough to allow a State to restructure substantially its AFDC and child support programs.

The State of Wisconsin is planning to undertake a major experiment which involves both its child support enforcement and AFDC programs.

#### *House bill*

Requires the Secretary of HHS to approve requests from the State of Wisconsin for waivers of Federal IV-D (CSE) and IV-A (AFDC) requirements that will allow the State to continue to receive Federal CSE and AFDC matching funds while testing modifications in both programs contained in its "Child Support Initiative," if the requested waivers meet the conditions summarized below.

The purposes of the requested waiver authority should be: (a) to improve the financial well-being of children; (b) to obtain flexibility in the manner and procedures to be used in providing IV-D CSE assistance to single parent households in gaining adequate child support, including the provision of IV-D services whether or not a family formally applies for such services; (c) to permit the State to test alternative IV-D and AFDC procedures in different sub-state areas without being out of compliance with "Statewideness" requirements; (d) to permit the State to establish alternative arrangements for the payment of child support in order to reinforce parental responsibility for the child; and (e) to permit the State to use Federal AFDC matching funds to insure that there is an adequate level of support when the contribution of the absent parent, by itself, is inadequate (including the provision of such support to non-AFDC families without requiring them to reduce income and assets to the prevailing AFDC eligibility level).

The alternative IV-D CSE and AFDC procedures or modifications allowed under the requested waivers must not disadvantage

children in need of child support or make children in the State worse off financially than they would be without the modifications in the State AFDC and IV-D programs. The State may receive no more Federal AFDC funds than it would without the modifications.

*Effective date.*—October 1, 1983.

### *Senate amendment*

As under the House bill, requires the Secretary of HHS to waive requirements of the AFDC and child support programs for the State of Wisconsin under specified conditions. The State may test its initiative in any county or counties, or throughout the State.

To qualify for waiver, the State must provide a complete description of the program which it will operate in place of the AFDC and child support programs, and make the description readily available to the public throughout the State. The Governor must provide assurances that, under the initiative, assistance will be provided to all children in need of financial support, and the State will continue to operate an effective child support enforcement program.

In addition, the State must agree that, during the period of the test, it will continue to determine eligibility for medical assistance under the State plan approved under title XIX of the Social Security Act, applying the criteria (insofar as may be applicable to members of families with dependent children affected by the initiative) in effect under its AFDC State plan approved for the month preceding the month in which the initiative becomes effective, except that the criteria shall be considered to have been changed to the extent necessary to comply with future changes in Federal law or regulations.

The State must specify measurable performance objectives, submit an evaluation plan, and agree to submit interim and final evaluations and reports, as the Secretary may require. In addition, the State must agree to obtain, at least once every two years, a financial and compliance audit of the funds it receives under this provision, and to obtain, after the initiative is ended, a final audit which must be made public.

The State's proposal must describe in detail how the initiative will affect children and families, with specific reference to the principles for calculating benefits and establishing and enforcing child support obligations. The description must also include estimates of cost and program effects and provide other relevant information necessary for the Secretary to determine whether the financial well-being of children and their families will be adversely affected by the initiative.

In general, the Federal payment which Wisconsin will be eligible to receive to operate its initiative will be equal to the State's proportionate share of the amount paid to all States for: (1) AFDC benefit costs; (2) AFDC administrative costs; (3) child support administrative costs; and (4) child support incentive payments.

The State's proportionate share of each amount listed above shall be the portion of each amount that bears the same ratio to such amount as the corresponding amount advanced to the State for quarters in fiscal years 1984 through 1986 bears to the total corresponding amount advanced to all other States for such quarters.

The initiative proposed by the State and the related requested waivers will become effective within 120 days after submission unless the Secretary determines that the financial well-being of children in the State will be adversely affected by the initiative. The Secretary must notify the State that, effective with the beginning of the following quarter (or later at the option of the State) the State may operate its initiative instead of its AFDC or child support programs in the areas designated by the State.

The State may cease the initiative and return to the administration of the regular AFDC and child support programs upon provision to the Secretary of at least 3 months notice. The Secretary may terminate approval of the initiative upon the giving of 3 months advance notice to the State if it is determined that the financial well-being of children in the areas where the initiative is in effect would be better achieved by operating the regular AFDC and child support programs.

*Effective date.*—For quarters beginning after September 30, 1986, and ending before October 1, 1994.

#### *Conference agreement*

The conference agreement follows the Senate amendment.

### 23. SENSE OF THE CONGRESS LANGUAGE

#### SECTION 23

#### *Present law*

No provision.

#### *House bill*

No provision.

#### *Senate amendment*

Incorporates Senate Concurrent Resolution 84, which makes certain findings with respect to child support enforcement, and sets forth as the sense of the Congress that—

(1) State and local governments must focus on the vital issues of child support, child custody, visitation rights, and other related domestic issues that are properly within the jurisdictions of such governments;

(2) all individuals involved in the domestic relations process should recognize the seriousness of these matters to the health and welfare of our nation's children and assign them the highest priority; and

(3) mutual recognition of the needs of all parties involved in divorce actions will greatly enhance the health and welfare of America's children and families.

#### *Conference agreement*

The conference agreement follows the Senate amendment.



## 24. LIMITATION ON DISCHARGE IN BANKRUPTCY OF CHILD SUPPORT OBLIGATIONS

### SECTION 24

#### *Present law*

In general, the Bankruptcy Act does not allow discharge in bankruptcy from any debt to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, if it is in connection with a separation, divorce decree, or property settlement agreement. However, support obligations that are assigned generally may be discharged, unless they are assigned to the State in connection with the collection of support by the IV-D agency on behalf of an AFDC recipient. In addition, a support obligation arising from a paternity determination is usually not protected from discharge in bankruptcy because it does not meet the requirement that it be in connection with a separation, divorce decree, or property settlement agreement.

#### *House bill*

No provision.

#### *Senate amendment*

Amends the Bankruptcy Act to provide that obligations that have been assigned to the State as part of the IV-D enforcement process may not be discharged in bankruptcy, regardless of whether they are on behalf of an AFDC family or non-AFDC family. In addition, the amendment provides protection against discharge in cases where support is established on the basis of a paternity determination.

#### *Conference agreement*

The conference agreement follows the House bill.

DAN ROSTENKOWSKI,  
HAROLD FORD of Tennessee,  
PETE STARK,  
DONALD J. PEASE,  
ROBERT T. MATSUI,  
WYCHE FOWLER, Jr.,  
BARBARA B. KENNELLY,  
BARBER B. CONABLE, Jr.,  
CARROLL CAMPBELL,  
W. HENSON MOORE,  
WILLIAM THOMAS of California,

*Managers on the Part of the House.*

ROBERT DOLE,  
BOB PACKWOOD,  
WILLIAM L. ARMSTRONG,  
CHUCK GRASSLEY,  
RUSSELL B. LONG,  
DANIEL PATRICK MOYNIHAN,  
BILL BRADLEY,

*Managers on the Part of the Senate.*



Finder's Aid  
P.L. 98-396 (98 Stat. 1369) Approved August 22, 1984  
"Second Supplemental Appropriations Act, 1984"

<u>Subject</u>	<u>S.S. Act Section</u>	<u>98 Stat.</u>	<u>H. Rep. 98-916</u>	<u>S. Rep. 98-570</u>	<u>H.C. Rep. 98-977</u>
Work Incentive Program - Demonstration Project - Extension of State Application Deadline	445(b)(1)	1392	--	68	34
Work Incentive Program - Demonstration Project - Contents of State Application	445(b)(1)(E)	1392	--	68	34
Work Incentive Program - Demonstration Project - Duration for States Applying before 6/30/84	445(d)	1392	--	68	34
Work Incentive Program - Demonstration Project - Date of Second Evaluation	445(e)	1393	--	68	34
Work Incentive Program - Demonstration Project - Study and Report of Allocation Formula	445(f)(3) New	1393	--	68	34



Public Law 98-396  
98th Congress

An Act

Making supplemental appropriations for the fiscal year ending September 30, 1984,  
and for other purposes.

Aug. 22, 1984  
[H.R. 6040]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to supply supplemental appropriations for the fiscal year ending September 30, 1984, and for other purposes, namely:

Second  
Supplemental  
Appropriations  
Act, 1984.

TITLE I

CHAPTER I

DEPARTMENT OF AGRICULTURE

AGRICULTURAL RESEARCH SERVICE

BUILDINGS AND FACILITIES

For an additional amount for acquisition of land, construction, repair, improvement, extension, alteration, and purchase of fixed equipment or facilities of or used by the Agricultural Research Service, \$50,200,000, to remain available until expended.

The Secretary of Agriculture may transfer the public use restrictions on land conveyed to Oklahoma State University in 1954 from that land to land of equal or greater value, as determined by the Secretary.

ANIMAL AND PLANT HEALTH INSPECTION SERVICE

SALARIES AND EXPENSES

For an additional amount for expenses, not otherwise provided for, necessary to prevent, control, and eradicate pests and plant and animal diseases; to carry out inspection, quarantine, and regulatory activities; and to protect the environment, as authorized by law, \$1,500,000.

AGRICULTURAL MARKETING SERVICE

None of the funds appropriated or made available under this or any other Act for fiscal year 1984 may be used by the Secretary of Agriculture to implement any amendment to an order applicable to a fruit, vegetable, nut or specialty crop issued pursuant to section 8c of the Agricultural Adjustment Act, as amended and reenacted by the agricultural Marketing Agreement Act of 1937 (7 U.S.C. 608c), unless each such amendment thereto is submitted to a separate vote.

50 Stat. 246.  
7 USC 601.

## ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH ADMINISTRATION

## ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH

42 USC 201  
note.

For an additional amount for carrying out the Public Health Service Act with respect to mental health, drug abuse, alcohol abuse, and alcoholism, \$1,175,000.

## SOCIAL SECURITY ADMINISTRATION

## OFFICE OF REFUGEE RESETTLEMENT

## REFUGEE AND ENTRANT ASSISTANCE

97 Stat. 964.

For purposes of section 101(c) of Public Law 98-151, the current rate for refugee and entrant assistance activities for fiscal year 1984 is \$541,761,000, of which not less than \$71,700,000 shall be available for social services (exclusive of targeted assistance), and not less than \$77,500,000 shall be available for targeted assistance.

Funds available for refugee and entrant targeted assistance activities under section 101(c) of Public Law 98-151 shall remain available through September 30, 1985.

## OFFICE OF HUMAN DEVELOPMENT SERVICES

## DEVELOPMENTAL DISABILITIES ASSISTANCE

42 USC 6031.

For an additional amount for carrying out Part B of the Developmental Disabilities Assistance and Bill of Rights Act, \$387,000.

## SOCIAL SERVICES BLOCK GRANT

For an additional amount for "Social services block grant", \$25,000,000.

## HUMAN DEVELOPMENT SERVICES

42 USC 3030d.  
42 USC 3030f.

For an additional amount for "Human development services", \$15,000,000, of which amount \$10,000,000 shall be available for part B of title III of the Older Americans Act of 1965 and \$5,000,000 shall be available for subpart 2 of part C of such title.

## FAMILY SOCIAL SERVICES

42 USC 601,  
670.

For an additional amount for "Family social services", \$60,000,000, for parts A and E of title IV of the Social Security Act, of which \$43,200,000 is for foster care and \$16,800,000 is for adoption assistance.

## WORK INCENTIVES

42 USC 645.

Section 445(b)(1) of the Social Security Act is amended by striking out "June 30, 1984," and inserting in lieu thereof "June 30, 1985,".

Section 445(b)(1)(E) of such Act is amended by striking out "prime sponsors under the Comprehensive Employment and Training Act of 1973," and inserting in lieu thereof "service delivery areas under the Job Training Partnership Act,".

Section 445(d) of such Act is amended by inserting before the period at the end of the first sentence the following: ", except that in the case of a State which has submitted a letter of application on or



before June 30, 1984, such program may continue in force until June 30, 1987”.

Section 445(e) of such Act is amended by striking out the third sentence and inserting in lieu thereof the following new sentence: “The second evaluation shall be conducted three years from the date of the Secretary’s approval of the demonstration program.”. 42 USC 645.

Section 445(f) of such Act is amended by adding the following new paragraph:

“(3) The Secretary of Health and Human Services shall conduct, in consultation with the States, a thorough study of the allocation formula described in paragraph (1) of this subsection and report to Congress no later than April 1, 1985, on the findings of this study with recommendations, if appropriate, for modifying the allocation formula to take into account State performance and to provide for the equitable distribution of funds.”.

These provisions shall become effective on the date of the enactment of this Act.

Effective date.  
42 USC 645  
note.

## DEPARTMENT OF EDUCATION

### COMPENSATORY EDUCATION FOR THE DISADVANTAGED

For an additional amount for carrying out section 418 of the Higher Education Act, \$750,000. 20 USC 1070d.

### SPECIAL PROGRAMS

For an additional amount for “Special programs”, \$500,000 for the purpose of Public Law 92-506, to remain available until September 30, 1985. 86 Stat. 907.

### SCHOOL ASSISTANCE IN FEDERALLY AFFECTED AREAS

The last two sentences of section 5(c) of the Act of September 30, 1950 (Public Law 874 Eighty-first Congress) (as added by section 23 of Public Law 98-211) are redesignated as subsection (h) of section 5 of that Act. This amendment shall be effective December 8, 1983.

For an additional amount for “School assistance in federally affected areas”, \$15,000,000 which shall remain available until expended and shall be for payments under section 7 of the Act of September 30, 1950, as amended (20 U.S.C. ch. 13): *Provided*, That no payments shall be made under section 7 of said Act to any local educational agency whose need for assistance under that section fails to exceed the lesser of \$10,000 or 5 per centum of the district’s current operating expenditures during the fiscal year preceding the one in which the disaster occurred: *Provided further*, That all funds appropriated in fiscal year 1984 under this heading for section 7 of said Act may be used for disasters occurring after October 1, 1983.

97 Stat. 1419.  
20 USC 240.  
Effective date.

20 USC 241-1.  
20 USC 241-1  
note.

### EDUCATION FOR THE HANDICAPPED

For an additional amount for regional resource centers, \$1,200,000.

### REHABILITATION SERVICES AND HANDICAPPED RESEARCH

For an additional amount for “Rehabilitation services and handicapped research”, \$34,200,000, of which \$33,900,000 shall be for allotments under section 100(b)(1) of the Rehabilitation Act of 1973, 29 USC 720

SEC. 309. The Secretary of Commerce is directed to submit, within thirty days of the date of enactment of this Act, to the appropriate committees of the Congress a report specifying a proposal to meet the funding obligations of the Fishermen's Guarantee Fund.

Fishermen's  
Guarantee Fund.  
Report.

This Act may be cited as the "Second Supplemental Appropriations Act, 1984".

Approved August 22, 1984.

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LEGISLATIVE HISTORY—H.R. 6040:

HOUSE REPORTS: No. 98-916 (Comm. on Appropriations) and No. 98-977 (Comm. of Conference).

SENATE REPORT No. 98-570 (Comm. on Appropriations).

CONGRESSIONAL RECORD, Vol. 130 (1984):

Aug. 1, considered and passed House.

Aug. 7, 8, considered and passed Senate, amended.

Aug. 10, House agreed to conference report, receded and concurred in certain Senate amendments, and in others with amendments. Senate agreed to conference report, receded and concurred in House amendments.

## SECOND SUPPLEMENTAL APPROPRIATIONS BILL, 1984

JULY 27, 1984.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WHITTEN, by direction of the Committee on Appropriations, submitted the following

## REPORT

[To accompany H.R. 6040]

The Committee on Appropriations submits the following report in explanation of the accompanying bill making supplemental appropriations for the fiscal year ending September 30, 1984, and for other purposes.

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Deficiency Syndrome (AIDS). Some of the activities in which efforts could be undertaken and for which increased funds are needed, as a result of this important breakthrough, are described below:

*National Cancer Institute.*—Development of improved methods to detect infection; research concerned with the treatment of AIDS and its related diseases; and increased production of the virus, HTLV-III, for use in blood screening tests, research with animal models, and vaccine development.

*National Institute of Allergy and Infectious Diseases.*—Epidemiological studies on the natural history of the disease; research on the control and treatment of the opportunistic infections that plague AIDS victims; search for possible “trigger” factors associated with HTLV-III; assessment of ancillary factors to identify those individuals at risk; production and testing of possible vaccines; storage and distribution of specimens from AIDS patients; and increased understanding of immune defects.

*Division of Research Resources.*—Additional studies at the Regional Primate Research Centers, in such areas as epidemiology, immune response, pathogenicity, and immunization.

## HEALTH CARE FINANCING ADMINISTRATION

### PROGRAM MANAGEMENT

The bill does not include a supplemental of \$4,000,000 requested in the President's budget for medicare related research and demonstrations. The Committee has no objection to this increase which will be used to carry out a variety of studies mandated by the Social Security Amendments of 1983. However, the Committee understands that there are currently excess funds available within the Program Management account which can be reprogrammed for this purpose. With this reprogramming \$35 million will now be available in FY 1984 for research activities, an increase of \$4 million over the amount obligated in FY 1983 for such studies.

### REFUGEE AND ENTRANT ASSISTANCE

The Committee is concerned about the FY 1984 apportionment for refugee and entrant social services. These funds are available under the “current rate” section of the FY 1984 Continuing Resolutions, Public Laws 98-107 and 98-151. It was the Committee's understanding at the time these Continuing Resolutions were reported to the House that the level of funding which would be made available under this section for social services would be \$71.7 million rather than the \$44.4 million now estimated by the Department of Health and Human Services. This was based on written responses by the Department to the Committee on April 28, 1983. The Committee is not aware of any policy changes in the social services program between April 28 and October 1, when the “current rate” section became effective. The Committee therefore expects the Secretary to seek, without delay, a revised apportionment of the social service funds compatible with its written statements to the Committee. The \$71.1 million allocation will permit the Office of Refugee Resettlement to award each state the social services allocation proposed by ORR in February 1984. Should the De-



partment refuse to do so, the Committee directs the Secretary to submit within 15 days of the date of this report a full explanation for why the Committee was misinformed by the Director of the Office of Refugee Resettlement on this matter.

In addition to the \$71.7 million available for social services, the Continuing Resolution also provides \$81.5 million for targeted assistance for communities which are heavily impacted due to large concentrations of refugees or entrants. The Committee strongly supports this program and directs the Department to allocate funds to those locations which have been designated by the Office of Refugee Resettlement as highly impacted. The Committee, however, has no objection to the reprogramming of \$4 million of these funds for preventative health activities.

The Committee has also been made aware of the continuing dispute between the Department of Health and Human Services and the State of California regarding Federal reimbursements to the State for refugee cash and medical assistance costs incurred in fiscal year 1982. This disagreement has continued despite a recently completed but not yet released audit by the HHS Inspector General. While the Congress and the Department's policy of reimbursing 100 percent of eligible costs is clear, it is impossible to close the books on 1982 costs until this lingering audit issue is resolved. The Committee therefore directs the Comptroller General to review the Department's procedures for determining 1982 costs, including its recent audit, and report back to the Committee as soon as possible on the validity of the California claims and the HHS review.

## OFFICE OF HUMAN DEVELOPMENT SERVICES

### SOCIAL SERVICES BLOCK GRANT

The Committee recommends a supplemental appropriation of \$25,000,000 for the Social Services Block Grant authorized by Title XX of the Social Security Act. This amount, together with \$2,675,000,000 included in the 1984 appropriation Act will provide a total of \$2,700,000,000, the full amount authorized for fiscal year 1984.

The Committee fails to understand the reason for the Administration's delay in submitting a supplemental budget request for this program. This is an entitlement program with an authorized ceiling established by law. Public Law 98-135 enacted on October 24, 1983 increased the authorization to \$2,700,000,000 for fiscal year 1984. This enactment occurred too late for consideration in the regular appropriation bill for 1984. Under normal budget practice, a supplemental budget request should have been submitted as soon as practicable following enactment of the revised authorization.

The Social Services Block Grant program is designed to encourage each State to furnish a variety of social services best suited to needs of the individuals residing in the State by using Federal block grant funds to (1) prevent, reduce or eliminate dependency; (2) achieve or maintain self-sufficiency; (3) prevent neglect, abuse, or exploitation of children and adults; (4) prevent or reduce inappropriate institutional care; (5) secure admission or referral for institutional care when other forms of care are not appropriate.

## FAMILY SOCIAL SERVICES

The Committee recommends approval of the supplemental budget request of \$43,200,000 of which \$38,300,000 is for foster care and \$4,900,000 is for adoption assistance.

Foster Care is authorized by Title IV-E of the Social Security Act. This program provides funds to States to assist with the costs of foster care maintenance for eligible children, administrative costs to manage the program, and training for staff. The purpose of the program is to assist States in providing proper care for children who need placement outside their homes, either in a foster family home or a group home or other institution; and to assist States in returning children home or to alternative permanent placements as soon as possible.

This program is an open-ended entitlement program. Federal financial participation is provided at the Medicaid match rate, which varies among States from 50 percent to 83 percent. Payment rates for children also vary from State to State.

Claims for the Federal share of State expenditures may be submitted up to two years after the quarter in which they occur. The additional \$38,300,000 will provide the funds to pay these valid and legitimate claims for the Federal share of State expenditures in earlier fiscal years under this entitlement program. This amount together with \$440,170,000 included in the 1984 appropriation Act will provide a total of \$478,470,000 for fiscal year 1984.

Adoption assistance is also authorized by Title IV-E of the Social Security Act. This program provides funds to States to assist in paying maintenance costs for children, particularly those with special needs who are adopted under certain conditions. Funds are also used for the administrative costs of managing the program and training for staff. The goal of this program is to provide permanent adoptive homes for children for whom such homes are difficult to find and to prevent long inappropriate stay in foster care for children who cannot return home.

This program is an entitlement program. There is no ceiling on the Federal payments to States. Federal financial participation in State expenditures for this program is provided at the Medicaid match rate which varies among States from 50 percent to 83 percent. Payment rates for individual children also vary from State to State but may not exceed comparable foster family care rates.

Since 1981 the number of States participating in this program has grown from three to fifty and the number of children receiving support has grown from an average of 289 a month to an expected level of 6,000 in 1984. The additional \$4,900,000 is necessary to provide Adoption Assistance payments for the children who otherwise would not be adopted and have to remain in foster care. This amount together with \$5,000,000 included in the 1984 appropriation Act will provide a total of \$9,900,000 for fiscal year 1984.

## DEPARTMENTAL MANAGEMENT

## GENERAL DEPARTMENTAL MANAGEMENT

The Committee is concerned over the reduction-in-force in the Office of the Secretary at the Department of Health and Human

## SUPPLEMENTAL APPROPRIATIONS BILL, 1984

AUGUST 2 (legislative day JULY 30), 1984.—Ordered to be printed

Mr. HATFIELD, from the Committee on Appropriations,  
submitted the following

### REPORT

[To accompany H.R. 6040]

The Committee on Appropriations, to which was referred the bill (H.R. 6040) making supplemental appropriations for the fiscal year 1984, and for other purposes, reports the same to the Senate with various amendments and with the recommendation that the bill be passed.

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## OFFICE OF HUMAN DEVELOPMENT SERVICES

## SOCIAL SERVICES BLOCK GRANT

1984 appropriation to date.....	\$2,675,000,000
1984 supplemental estimate.....	
House allowance.....	25,000,000
Committee recommendation.....	25,000,000

The Committee recommends a supplemental appropriation of \$25,000,000, the same as the House allowance, for the social services block grant. This would increase the fiscal year 1984 level from \$2,675,000,000 to \$2,700,000,000, the full amount mandated by law for this appropriated entitlement program.

Subsequent to conference action on the fiscal year 1984 regular Labor-HHS-Education appropriations bill, legislation was enacted raising the social services block grant authorization to \$2,700,000,000. Despite this fact, the administration did not submit a supplemental budget request, even though appropriations for this program are considered mandatory up to the ceiling established by the substantive legislation.

These funds are granted to States to enable them to provide services to low-income persons, including recipients of AFDC, SSI, and medic-aid program funds. Services include programs to: prevent, reduce, or eliminate dependency on Federal assistance; assist low-income persons to achieve or maintain self-sufficiency, including day care services; prevent neglect, abuse, or exploitation of children and adults; prevent or reduce inappropriate institutional care; and secure admission or referral for institutional care when other forms of care are not appropriate.

## HUMAN DEVELOPMENT SERVICES

1984 appropriation to date <sup>1</sup> .....	\$624,468,000
1984 supplemental estimate.....	
House allowance.....	15,000,000
Committee recommendation.....	15,000,000

<sup>1</sup>Includes amounts for aging supportive services and nutrition only.

The Committee concurs with the House allowance of \$15,000,000 for expanded aging supportive services and nutrition activities for which there was no budget request. Of this amount, \$10,000,000 is intended for supportive services, and \$5,000,000 for nutritious meals, as authorized by the Older Americans Act. This is in addition to appropriations of \$624,468,000 already enacted for these activities in fiscal year 1984, raising the total available to \$639,468,000.

Funds for supportive services and centers are awarded by formula grant to each State with an approved State plan on aging to pay up to 85 percent of the cost of operating and establishing social services and multipurpose senior centers. State agencies on aging make awards to area agencies on aging on the basis of State-approved area plans.

The Older Americans Act nutrition programs provide 85 percent of the funds for operating and establishing nutrition services projects, which provide meals to older persons. Each meal must: meet one-third of the minimum daily dietary requirements; consider health, religious,



or ethnic dietary needs of participants; and be served in food containers and with utensils usable by blind and handicapped individuals. These meals are available at least once a day, 5 days a week.

#### FAMILY SOCIAL SERVICES

1984 appropriation to date.....	\$625,905,000
1984 supplemental estimate.....	43,200,000
House allowance.....	43,200,000
Committee recommendation.....	60,000,000

The Committee recommends a supplemental appropriation of \$60,000,000, an increase of \$16,800,000 over the budget request and House allowance for the family social services account. This would increase the fiscal year 1984 total appropriation from \$625,905,000 to \$685,905,000.

The budget request and House allowance consists of an additional \$38,300,000 for foster care activities, and \$4,900,000 for adoption assistance, both entitlement programs.

The adoption assistance program is also an open-ended entitlement program based on the medicaid match rate, and provides funds to States to assist in paying maintenance costs for children, particularly those with special needs who are adopted under certain conditions. Funds are also used for the administrative costs of managing the program and training for staff. The goal of the program is to provide permanent adoptive homes for children for whom adoptive homes are difficult to find and to prevent long inappropriate stay in foster care for children who cannot return home.

Additional funds are needed to meet prior year foster care claims that have been deemed allowable, and to meet allowable claims submitted by States for payments to families adopting children with special needs.

Subsequent to transmittal of this budget request, the Department of Health and Human Services submitted, and the Committee approved, a reprogramming of \$4,900,000 from foster care to adoption assistance. The Department planned to replace these borrowed foster care funds once the supplemental was enacted. The Committee recommendation, therefore, provides a \$43,200,000 supplemental for foster care activities.

The Committee recommendation of \$16,800,000 for additional adoption assistance costs reflects updated estimates of both current and prior year State claims for this entitlement program.

The Committee has received considerable indication that the 10 regional resource centers for children, youth and families, which are presently supported by the Office of Human Development Services, have been highly effective in providing necessary information and coordinative services to State governments, and private sector agencies, in implementing the provisions of the Adoption Assistance and Child Welfare Act of 1980. The Committee, accordingly, directs the Department to fund these projects at their present level of support for this, and the next, fiscal year.

## WORK INCENTIVES

The Committee recommends bill language authorizing a 1-year extension of work incentive (WIN) demonstration projects. Without this language, some States would be required to terminate successful demonstration projects which have been placing welfare recipients into full-time permanent jobs.

Specifically, the bill language extends the State application deadline for the WIN demonstration program by 1 additional year (until June 30, 1985) and extends the demonstration period for States applying on or before June 30, 1987. Similar language was included in the Senate-passed version of House Joint Resolution 492, but was deleted without prejudice in conference, with the intention of considering this matter as part of a subsequent bill.

## DEPARTMENT OF EDUCATION

## COMPENSATORY EDUCATION FOR THE DISADVANTAGED

1984 appropriation to date.....	\$3,487,500,000
1984 supplemental estimate.....	
House allowance.....	
Committee recommendation.....	750,000

The Committee has provided an additional \$750,000 for the college assistance migrant program (CAMP). This program assists migrant and seasonal farmworkers enrolled as first-year undergraduates to make the transition from secondary to postsecondary education and to complete their first year of college successfully. Participants receive tuition scholarships and a stipend for personal expenses as well as tutoring and counseling services. The program also assists students in obtaining loans, grants, and work study opportunities to cover the costs of the remaining 3 undergraduate years. The additional amount provided will support approximately 245 more needy migrant students than would be served at the amount originally appropriated for fiscal year 1984.

## SPECIAL PROGRAMS

1984 appropriation to date.....	\$527,867,000
1984 supplemental estimate.....	
House allowance.....	500,000
Committee recommendation.....	500,000

The Committee concurs with the House in providing an additional \$500,000 to fund fully the newly authorized amount for the Ellender fellowship program. Under this program, Federal funds partially pay for expenses associated with bringing to the Nation's Capital, disadvantaged students for one week seminars on the workings of the Federal Government.

This supplemental appropriation would support an additional 445 fellowships for disadvantaged students and 55 teachers to participate in the program in academic year 1984-85.

## MAKING SUPPLEMENTAL APPROPRIATIONS FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1984, AND FOR OTHER PURPOSES

---

AUGUST 10, 1984.—Ordered to be printed

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Mr. WHITTEN, from the committee of conference,  
submitted the following

### CONFERENCE REPORT

[To accompany H.R. 6040]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 6040) making supplemental appropriations for the fiscal year ending September 30, 1984, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 1, 10, 14, 21, 44, 53, 54, 56, 78, 79, 83, 91, 97, 108, 122, 123, 125, 126, 127, 128, 133, 134, 150, 172, 189, 190, 192, 193, 194, 197, 200, 206, and 216.

That the House recede from its disagreement to the amendments of the Senate numbered 5, 15, 17, 24, 25, 29, 31, 33, 34, 37, 38, 41, 42, 46, 57, 64, 65, 68, 69, 70, 71, 72, 74, 88, 89, 90, 93, 95, 98, 100, 102, 105, 109, 112, 113, 114, 115, 120, 121, 137, 139, 140, 142, 169, 173, 174, 176, 177, 182, 191, 196, 198, 202, 203, 204, and 207, and agree to the same.

Amendment numbered 7:

That the House recede from its disagreement to the amendment of the Senate numbered 7, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert \$12,000,000; and the Senate agree to the same.

Amendment numbered 8:

That the House recede from its disagreement to the amendment of the Senate numbered 8, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert \$12,000,000; and the Senate agree to the same.



contract provisions inoperative. Particularly in those cases where the actions of such agencies as the Internal Revenue Service have arguably contributed to the termination of the involved plan or influenced the timing of same to an extent that prejudices individual plan participants, this interpretation is not justified. In these cases, these provisions should be interpreted less restrictively. The conferees believe that the Pension Benefit Guaranty Corporation should review all cases under its jurisdiction in light of this provision, insofar as it related to eligibility.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### CENTERS FOR DISEASE CONTROL

#### DISEASE CONTROL

Amendment No. 108: Appropriates \$1,750,000 for activities associated with Acquired Immune Deficiency Syndrome (AIDS) as proposed by the House, instead of \$3,200,000 as proposed by the Senate.

### ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH ADMINISTRATION

#### ALCOHOL, DRUG ABUSE AND MENTAL HEALTH

Amendment No. 109: Appropriates \$1,175,000 for the Alcohol, Drug Abuse and Mental Health Administration for research activities related to Acquired Immune Deficiency Syndrome (AIDS) as proposed by the Senate. The House bill included no similar provision.

### SOCIAL SECURITY ADMINISTRATION

#### REFUGEE AND ENTRANT ASSISTANCE

Amendment No. 110: Reported in technical disagreement. The managers on the part of the House will move to recede and concur in the amendment of the Senate which clarifies the levels of funding available for refugee and entrant assistance under the fiscal year 1984 Continuing Resolution. The House bill included no similar provision.

Amendment No. 111: Reported in technical disagreement. The managers on the part of the House will move to recede and concur in the amendment of the Senate which extends the availability of fiscal year 1984 "targeted assistance" funds through September 30, 1985. The House bill included no similar provision.

### OFFICE OF HUMAN DEVELOPMENT SERVICES

#### FAMILY SOCIAL SERVICES

Amendment No. 112: Appropriates \$60,000,000 as proposed by the Senate instead of \$43,200,000 as proposed by the House.

Amendment No. 113: Earmarks \$43,200,000 for foster care as proposed by the Senate instead of \$38,300,000 as proposed by the House.



Amendment No. 114: Earmarks \$16,800,000 for adoption assistance as proposed by the Senate instead of \$4,900,000 as proposed by the House.

#### DEVELOPMENTAL DISABILITIES ASSISTANCE

Amendment No. 115: Appropriates \$387,000 for part B of the Developmental Disabilities Assistance and Bill of Rights Act as proposed by the Senate. The House bill includes no funds for this purpose.

#### WORK INCENTIVES

Amendment No. 116: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which amends the Social Security Act by extending certain deadlines in the Work Incentives (WIN) demonstration program and by requiring a study of the allocation formula.

### DEPARTMENT OF EDUCATION

#### COMPENSATORY EDUCATION FOR THE DISADVANTAGED

Amendment No. 117: Reported in technical disagreement. The managers on the part of the House will move to recede and concur in the amendment of the Senate which appropriates \$750,000 for carrying out section 418 of the Higher Education Act.

#### SCHOOL ASSISTANCE IN FEDERALLY AFFECTED AREAS

Amendment No. 118: Reported in technical disagreement. The managers on the part of the House will move to recede and concur in the amendment of the Senate which redesignates the last two sentences of section 5(c) of the Act of September 30, 1950 as subsection 5(h), effective December 8, 1983.

The conferees are aware of the situation in Bourne, Massachusetts, where a decline of 46 federally connected students is likely to result in a loss of \$600,000 in federal aid, nearly 60% of the previous year's Impact Aid payment. The Department is directed to look into this matter to see what can be done to resolve this most serious fiscal year 1984 problem, and to report back to the Congress promptly on potential administrative remedies.

Amendment No. 119: Reported in technical disagreement. The managers on the part of the House will move to recede and concur in the amendment of the Senate which appropriates \$15,000,000 for payments under section 7 of the Act of September 30, 1950. The House bill includes no funds for this purpose.

#### EDUCATION FOR THE HANDICAPPED

Amendment No. 120: Appropriates \$1,200,000 for regional resource centers as proposed by the Senate. The House bill includes no funds for this purpose.



Finder's Aid  
P.L. 98-460 (98 Stat. 1794) Approved October 9, 1984  
"Social Security Disability Benefits Reform Act of 1984"

<u>Subject</u>	<u>S.S. Act Section</u>	<u>P.L. Section</u>	<u>98 Stat.</u>	<u>H. Rep. 98-618</u>	<u>S. Rep. 98-466</u>	<u>H.C. Rep. 98-1039</u>
Representative Payee - Need (technical amendment)	205(j) Redes- ignated as (j)(1)	16(a)	1809	--	--	--
Representative Payee - Timely Investigation of Need	205(j) (2) New	16(a)	1809	--	5, 29, 36	42
Representative Payee - Accountability Monitoring	205(j) (3) New	16(a)	1809	--	5, 29, 36	42
Representative Payee - Secretarial Report to Congress	205(j) (4) New	16(a)	1809	--	5, 29, 36	42
Representative Payee - Penalties for Violation	208	16(c)(2)	1811	--	5, 29, 36	42
Disability Benefits - Multiple Impairments (technical amendment)	216(i) (1)	4(a)(2)	1800	46	--	--
Disability Benefits - Cessation of Period of Disability	216(i) (2)(D)	2(b)	1796	46	--	--
Disability Benefits - State Agency Compliance with Federal Law (effective date)	221(a) (1)	17(a)(2)	1812	--	5, 32	45

Note: There is material relating to disability reform contained in H. Rep. 98-432 accompanying P.L. 98-369.

<u>Subject</u>	<u>S.S. Act Section</u>	<u>P.L. Section</u>	<u>98 Stat.</u>	<u>H. Rep. 98-618</u>	<u>S. Rep. 98-466</u>	<u>H.C. Rep. 98-1039</u>
Disability Benefits - State Agency Compliance with Federal Law	221(b) (1)	17(a)(1)	1811	--	5, 32, 36, 47	45
Disability Benefits - State Agency Compliance with Federal Law (technical amendment)	221(b) (3)(A)	17(a)(3)(A)	1812	-	--	--
Disability Benefits - State Agency Compliance with Federal Law (technical amendment)	221(b) (3)(B)	17(a)(3)(B)	1812	--	--	--
Disability Benefits - State Agency Compliance with Federal Law (technical amendment)	221(d)	17(a)(4)	1812	--	--	--
Disability Benefits - Professional Evaluation of Mental Impairments	221(h) New	8(a)	1804	4, 18, 41, 43, 49	3, 20, 36, 40	33
Disability Benefits - Prereview Notice	221(i) (4) New	6(a)	1802	--	3, 24, 36	33
Disability Benefits - Standards for Referral to Consultatives	221(j) New	9(a)(1)	1804	4, 19, 43, 50	4, 25, 36	34
Disability Benefits - Uniform Standards	221(k) New	10(a)	1805	4, 20, 43	2, 18, 36, 45	35
Disability Benefits - Payment of Costs of Rehabilitation Services (technical amendment)	222(d) (1)	11(a)(1)(A)	1805	50	--	--
Disability Benefits - Payment of Costs of Rehabilitation Services	222(d) (1)	11(a)(1)(B)	1805	5, 26, 42, 50	4, 26, 36, 41	38



<u>Subject</u>	<u>S.S. Act Section</u>	<u>P.L. Section</u>	<u>98 Stat.</u>	<u>H. Rep. 98-618</u>	<u>S. Rep. 98-466</u>	<u>H.C. Rep. 98-1039</u>
Disability Benefits - Payment of Costs of Rehabilitation Services	222(d) (1)	11(a)(2)	1806	5, 26, 42, 50	4, 26, 36, 41	38
Disability Benefits - Multiple Impairments	223(d) (2)(C) New	4(a)(1)	1800	3, 14, 41, 43, 51	3, 22, 36, 40	29
Disability Benefits - Evaluation of Pain	223(d) (5)	3(a)(1)	1799	3, 13, 43	3, 23, 36	28
Disability Benefits - Consultative Examinations (technical amendment)	223(d) (5) Re- desig- nated as (d)(5)(A)	9(b)(1)	1805	--	--	--
Disability Benefits - Consultative Examinations - Evidence	223(d) (5)(B) New	9(b)(1)	1805	4, 19	4, 25, 36	34
Disability Benefits - Termination - Standards of Review - Medical Improvement	223(f)	2(a)	1794	3, 9, 40, 43, 51	2, 7, 36, 39 43	23
Disability Benefits - Continuation of Benefits During Appeal	223(g) (1)	7(a)(i)(A)	1803	4, 17, 41, 43, 53	2, 17, 36, 40	33
Disability Benefits - Continuation of Benefits During Appeal - Cut-Off Date Extension	223(g) (1) (iii)	7(a)(1)(B)	1803	2, 17, 41, 43	2, 17, 40	33
Disability Benefits - Continuation of Benefits During Appeal - Cut-Off Date Extension	223(g) (3)(B)	7(a)(2)	1803	2, 17, 41, 43	2, 17, 40	33
Supplemental Security Income - Multiple Impairments	1614(a) (3)(G) (SSI) New	4(b)	1800	3, 5, 14, 37, 41, 43, 55	3, 22, 36, 40	29

<u>Subject</u>	<u>S.S. Act Section</u>	<u>P.L. Section</u>	<u>98 Stat.</u>	<u>H. Rep. 98-618</u>	<u>S. Rep. 98-466</u>	<u>H.C. Rep. 98-1039</u>
Supplemental Security Income - Evaluation of Pain	1614(a) (3)(H) (SSI)	3(a)(2)	1799	3, 5, 13, 37, 43	3, 23, 36	28
Supplemental Security Income - Professional Evaluation of Mental Impairments	1614(a) (3)(H) (SSI) New	8(b)	1804	4, 5, 18, 37, 41, 43	3, 20, 36, 40	33
Supplemental Security Income - Uniform Standards	1614(a) (3)(H) (SSI)	10(b)	1805	4, 5, 20, 37, 43	2, 18, 36, 45	35
Supplemental Security Income - Termination - Standards of Review - Medical Improvement	1614(a) (5) (SSI) New	2(c)	1796	4, 5, 18, 37, 41, 43	2, 7, 36, 39, 43	23
Supplemental Security Income - Payment of Costs of Rehabilitation Services	1615(d) (SSI)	11(b)(1)	1806	5, 26, 37, 42, 56	4, 26, 36, 41	38
Supplemental Security Income - Payment of Costs of Rehabilitation Services	1615(d) (SSI)	11(b)(2)	1806	5, 26, 37, 42, 56	4, 26, 36, 41	38
Supplemental Security Income - Disability Outreach	1619(c) (SSI) New	14(b)	1808	5, 28, 42, 57	4, 27, 41	41
Supplemental Security Income - Representative Payee - Timely Investigation of Need (technical amendment)	1631(a) (2) (SSI) Redesig- nated as (a)(2)(A)	16(b)	1809	--	--	--
Supplemental Security Income - Representative Payee - Timely Investigation of Need	1631(a) (2)(B) (SSI) New	16(b)	1809	--	5, 29, 36	42

<u>Subject</u>	<u>S.S. Act Section</u>	<u>P.L. Section</u>	<u>98 Stat.</u>	<u>H. Rep. 98-618</u>	<u>S. Rep. 98-466</u>	<u>H.C. Rep. 98-1039</u>
Supplemental Security Income - Representative Payee - Accountability Monitoring	1631(a) (2)(C) (SSI) New	16(b)	1810	--	5, 29, 36	42
Supplemental Security Income - Representative Payee - Secretarial Report to Congress	1631(a) (2)(D) (SSI) New	16(b)	1810	--	5, 29, 36	42
Supplemental Security Income - Continuation of Benefits During Appeal	1631(a) (7) (SSI) New	7(b)	1803	2, 5, 17, 37, 41, 43	2, 17, 40	33
Supplemental Security Income - Representative Payee - Penalties for Violation (technical amendment)	1632 (SSI) Redesig- nated as 1632(a)	16(c)(1)	1810	--	--	--
Supplemental Security Income - Representative Payee - Penalties for Violaton	1632(b) (SSI) New	16(c)(1)	1810	--	5, 29, 36	42
Supplemental Security Income - Prereview Notice	1633(c) (SSI) New	6(b)	1802	--	3, 24, 36	33





PUBLIC LAW 98-460—OCT. 9, 1984

**SOCIAL SECURITY DISABILITY BENEFITS  
REFORM ACT OF 1984**

Public Law 98-460  
98th Congress

An Act

Oct. 9, 1984

[H.R. 3755]

To amend titles II and XVI of the Social Security Act to provide for reform in the disability determination process.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Social Security  
Disability  
Benefits  
Reform Act of  
1984.  
42 USC 1305  
note.

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Social Security Disability Benefits Reform Act of 1984".

TABLE OF CONTENTS

- Sec. 1. Short title and table of contents.
- Sec. 2. Standard of review for termination of disability benefits and periods of disability.
- Sec. 3. Evaluation of pain.
- Sec. 4. Multiple impairments.
- Sec. 5. Moratorium on mental impairment reviews.
- Sec. 6. Notice of reconsideration; prereview notice; demonstration projects.
- Sec. 7. Continuation of benefits during appeal.
- Sec. 8. Qualifications of medical professionals evaluating mental impairments.
- Sec. 9. Consultative examinations; medical evidence.
- Sec. 10. Uniform standards.
- Sec. 11. Payment of costs of rehabilitation services.
- Sec. 12. Advisory council study.
- Sec. 13. Qualifying experience for appointment of certain staff attorneys to administrative law judge positions.
- Sec. 14. Supplemental security income benefits for individuals who perform substantial gainful activity despite severe medical impairment.
- Sec. 15. Frequency of continuing eligibility reviews.
- Sec. 16. Determination and monitoring of need for representative payee.
- Sec. 17. Measures to improve compliance with Federal law.
- Sec. 18. Separability.

STANDARD OF REVIEW FOR TERMINATION OF DISABILITY BENEFITS AND PERIODS OF DISABILITY

SEC. 2. (a) Section 223(f) of the Social Security Act is amended to read as follows:

"Standard of Review for Termination of Disability Benefits

"(f) A recipient of benefits under this title or title XVIII based on the disability of any individual may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

"(1) substantial evidence which demonstrates that—

"(A) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the individual's ability to work), and

97 Stat. 134.  
42 USC 423.

42 USC 1395.

“(B)(i) the individual is now able to engage in substantial gainful activity, or

“(ii) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is no longer deemed, under regulations prescribed by the Secretary, sufficient to preclude the individual from engaging in gainful activity; or

42 USC 402.

“(2) substantial evidence which—

“(A) consists of new medical evidence and (in a case to which clause (ii)(II) does not apply) a new assessment of the individual’s residual functional capacity, and demonstrates that—

“(i) although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology (related to the individual’s ability to work), and

“(ii)(I) the individual is now able to engage in substantial gainful activity, or

“(II) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is no longer deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity, or

“(B) demonstrates that—

“(i) although the individual has not improved medically, he or she has undergone vocational therapy (related to the individual’s ability to work), and

“(ii) the requirements of subclause (I) or (II) of subparagraph (A)(ii) are met; or

“(3) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual’s impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore—

“(A) the individual is able to engage in substantial gainful activity, or

“(B) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is not deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity; or

“(4) substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to that determination) which demonstrates that a prior determination was in error.

Nothing in this subsection shall be construed to require a determination that a recipient of benefits under this title or title XVIII based on an individual’s disability is entitled to such benefits if the prior determination was fraudulently obtained or if the individual is engaged in substantial gainful activity (or gainful activity in the

42 USC 1395.



case of a widow, surviving divorced wife, widower, or surviving divorced husband), cannot be located, or fails, without good cause, to cooperate in a review of the entitlement to such benefits or to follow prescribed treatment which would be expected to restore his or her ability to engage in substantial gainful activity (or gainful activity in the case of a widow, surviving divorced wife, widower, or surviving divorced husband). Any determination under this section shall be made on the basis of all the evidence available in the individual's case file, including new evidence concerning the individual's prior or current condition which is presented by the individual or secured by the Secretary. Any determination made under this section shall be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual's condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the individual has previously been determined to be disabled. For purposes of this subsection, a benefit under this title is based on an individual's disability if it is a disability insurance benefit, a child's, widow's, or widower's insurance benefit based on disability, or a mother's or father's insurance benefit based on the disability of the mother's or father's child who has attained age 16."

42 USC 416.  
*Ante*, p. 1794.

42 USC 1395.

(b) Section 216(i)(2)(D) of such Act is amended by adding at the end thereof the following: "The provisions set forth in section 223(f) with respect to determinations of whether entitlement to benefits under this title or title XVIII based on the disability of any individual is terminated (on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling) shall apply in the same manner and to the same extent with respect to determinations of whether a period of disability has ended (on the basis of a finding that the physical or mental impairment on the basis of which the finding of disability was made has ceased, does not exist, or is not disabling)."

42 USC 1382c.

(c) Section 1614(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(5) A recipient of benefits based on disability under this title may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

"(A) substantial evidence which demonstrates that—

"(i) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the individual's ability to work), and

"(ii) the individual is now able to engage in substantial gainful activity; or

"(B) substantial evidence (except in the case of an individual eligible to receive benefits under section 1619) which—

42 USC 1382h.

"(i) consists of new medical evidence and a new assessment of the individual's residual functional capacity, and demonstrates that—

"(I) although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology (related to the individual's ability to work), and

"(II) the individual is now able to engage in substantial gainful activity, or



“(ii) demonstrates that—

“(I) although the individual has not improved medically, he or she has undergone vocational therapy (related to the individual’s ability to work), and

“(II) the individual is now able to engage in substantial gainful activity; or

“(C) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual’s impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore the individual is able to engage in substantial gainful activity; or

“(D) substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to that determination) which demonstrates that a prior determination was in error.

Nothing in this paragraph shall be construed to require a determination that an individual receiving benefits based on disability under this title is entitled to such benefits if the prior determination was fraudulently obtained or if the individual is engaged in substantial gainful activity, cannot be located, or fails, without good cause, to cooperate in a review of his or her entitlement or to follow prescribed treatment which would be expected to restore his or her ability to engage in substantial gainful activity. Any determination under this paragraph shall be made on the basis of all the evidence available in the individual’s case file, including new evidence concerning the individual’s prior or current condition which is presented by the individual or secured by the Secretary. Any determination made under this paragraph shall be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual’s condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the individual has previously been determined to be disabled.”

(d)(1) The amendments made by this section shall apply only as provided in this subsection.

Effective date.  
42 USC 423 note.

(2) The amendments made by this section shall apply to—

(A) determinations made by the Secretary on or after the date of the enactment of this Act;

(B) determinations with respect to which a final decision of the Secretary has not yet been made as of the date of the enactment of this Act and with respect to which a request for administrative review is made in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act and regulations of the Secretary;

42 USC 405.

(C) determinations with respect to which a request for judicial review was pending on September 19, 1984, and which involve an individual litigant or a member of a class in a class action who is identified by name in such pending action on such date; and

(D) determinations with respect to which a timely request for judicial review is or has been made by an individual litigant of a final decision of the Secretary made within 60 days prior to the date of the enactment of this Act.

In the case of determinations described in subparagraphs (C) and (D) in actions relating to medical improvement, the court shall remand such cases to the Secretary for review in accordance with the provisions of the Social Security Act as amended by this section.

(3) In the case of a recipient of benefits under title II, XVI, or XVIII of the Social Security Act—

(A) who has been determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits were provided has ceased, does not exist, or is not disabling, and

(B) who was a member of a class certified on or before September 19, 1984, in a class action relating to medical improvement pending on September 19, 1984, but was not identified by name as a member of the class on such date,

the court shall remand such case to the Secretary. The Secretary shall notify such individual by certified mail that he may request a review of the determination described in subparagraph (A) based on the provisions of this section and the provisions of the Social Security Act as amended by this section. Such notification shall specify that the individual must request such review within 120 days after the date on which such notification is received. If such request is made in a timely manner, the Secretary shall make a review of the determination described in subparagraph (A) in accordance with the provisions of this section and the provisions of the Social Security Act as amended by this section. The amendments made by this section shall apply with respect to such review, and the determination described in subparagraph (A) (and any redetermination resulting from such review) shall be subject to further administrative and judicial review, only if such request is made in a timely manner.

(4) The decision by the Secretary on a case remanded by a court pursuant to this subsection shall be regarded as a new decision on the individual's claim for benefits, which supersedes the final decision of the Secretary. The new decision shall be subject to further administrative review and to judicial review only in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act and regulations issued by the Secretary in conformity with such section.

(5) No class in a class action relating to medical improvement may be certified after September 19, 1984, if the class action seeks judicial review of a decision terminating entitlement (or a period of disability) made by the Secretary of Health and Human Services prior to September 19, 1984.

(6) For purposes of this subsection, the term "action relating to medical improvement" means an action raising the issue of whether an individual who has had his entitlement to benefits under title II, XVI, or XVIII of the Social Security Act based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.

(e) Any individual whose case is remanded to the Secretary pursuant to subsection (d) or whose request for a review is made in a timely manner pursuant to subsection (d), may elect, in accordance with section 223(g) or 1631(a)(7) of the Social Security Act, to have payments made beginning with the month in which he makes such

42 USC 401,  
1381, 1395.

42 USC 1305.

42 USC 405.

42 USC 423 note.

42 USC 423.  
*Post*, p. 1803.



election, and ending as under such section 223(g) or 1631(a)(7). Notwithstanding such section 223(g) or 1631(a)(7), such payments (if elected)—

42 USC 423.  
Post, p. 1803.

(1) shall be made at least until an initial redetermination is made by the Secretary; and

(2) shall begin with the payment for the month in which such individual makes such election.

(f) In the case of any individual who is found to be under a disability after a review required under this section, such individual shall be entitled to retroactive benefits beginning with benefits payable for the first month to which the most recent termination of benefits applied.

42 USC 423 note.

(g) The Secretary of Health and Human Services shall prescribe regulations necessary to implement the amendments made by this section not later than 180 days after the date of the enactment of this Act.

Regulations.  
42 USC 423 note.

#### EVALUATION OF PAIN

SEC. 3. (a)(1) Section 223(d)(5) of the Social Security Act is amended by inserting after the first sentence the following new sentences: "An individual's statement as to pain or other symptoms shall not alone be conclusive evidence of disability as defined in this section; there must be medical signs and findings, established by medically acceptable clinical or laboratory diagnostic techniques, which show the existence of a medical impairment that results from anatomical, physiological, or psychological abnormalities which could reasonably be expected to produce the pain or other symptoms alleged and which, when considered with all evidence required to be furnished under this paragraph (including statements of the individual or his physician as to the intensity and persistence of such pain or other symptoms which may reasonably be accepted as consistent with the medical signs and findings), would lead to a conclusion that the individual is under a disability. Objective medical evidence of pain or other symptoms established by medically acceptable clinical or laboratory techniques (for example, deteriorating nerve or muscle tissue) must be considered in reaching a conclusion as to whether the individual is under a disability."

42 USC 423.

(2) Section 1614(a)(3)(H) of such Act (as added by section 8 of this Act) is amended by striking out "section 221(h)" and inserting in lieu thereof "sections 221(h) and 223(d)(5)".

Post, p. 1804.

(3) The amendments made by paragraphs (1) and (2) shall apply to determinations made prior to January 1, 1987.

Effective date.  
42 USC 423 note.

(b)(1) The Secretary of Health and Human Services shall appoint a Commission on the Evaluation of Pain (hereafter in this section referred to as the "Commission") to conduct a study concerning the evaluation of pain in determining under titles II and XVI of the Social Security Act whether an individual is under a disability. Such study shall be conducted in consultation with the National Academy of Sciences.

Commission on the Evaluation of Pain.  
42 USC 423 note.

(2) The Commission shall consist of at least twelve experts, including a significant representation from the field of medicine who are involved in the study of pain, and representation from the fields of law, administration of disability insurance programs, and other appropriate fields of expertise.

42 USC 401,  
1381.

(3) The Commission shall be appointed by the Secretary of Health and Human Services (without regard to the requirements of the Federal Advisory Committee Act) within 60 days after the date of

5 USC app.

the enactment of this Act. The Secretary shall from time to time appoint one of the members to serve as Chairman. The Commission shall meet as often as the Secretary deems necessary.

(4) Members of the Commission shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Members who are not employees of the United States, while attending meetings of the Commission or otherwise serving on the business of the Commission, shall be paid at a rate equal to the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day, including traveltime, during which they are engaged in the actual performance of duties vested in the Commission. While engaged in the performance of such duties away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(5) The Commission may engage such technical assistance from individuals skilled in medical and other aspects of pain as may be necessary to carry out its functions. The Secretary shall make available to the Commission such secretarial, clerical, and other assistance and any pertinent data prepared by the Department of Health and Human Services as the Commission may require to carry out its functions.

(6) The Secretary shall submit the results of the study under paragraph (1), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than December 31, 1985. The Commission shall terminate at the time such results are submitted.

Termination  
date.

#### MULTIPLE IMPAIRMENTS

42 USC 423.

SEC. 4. (a)(1) Section 223(d)(2) of the Social Security Act is amended by adding at the end thereof the following new subparagraph:

“(C) In determining whether an individual’s physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under this section, the Secretary shall consider the combined effect of all of the individual’s impairments without regard to whether any such impairment, if considered separately, would be of such severity. If the Secretary does find a medically severe combination of impairments, the combined impact of the impairments shall be considered throughout the disability determination process.”.

42 USC 416.

(2) The third sentence of section 216(i)(1) of such Act is amended by inserting “(2)(C),” after “(2)(A),”.

42 USC 1382c.

(b) Section 1614(a)(3) of such Act is amended by adding at the end thereof the following new subparagraph:

“(G) In determining whether an individual’s physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under this section, the Secretary shall consider the combined effect of all of the individual’s impairments without regard to whether any such impairment, if considered separately, would be of such severity. If the Secretary does find a medically severe combination of impairments, the combined impact of the impairments shall be considered throughout the disability determination process.”.



(c) The amendments made by this section shall apply with respect to determinations made on or after the first day of the first month beginning after 30 days after the date of the enactment of this Act. Effective date.  
42 USC 423 note.

#### MORATORIUM ON MENTAL IMPAIRMENT REVIEWS

SEC. 5. (a) The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall revise the criteria embodied under the category "Mental Disorders" in the "Listing of Impairments" in effect on the date of the enactment of this Act under appendix 1 to subpart P of part 404 of title 20 of the Code of Federal Regulations. The revised criteria and listings, alone and in combination with assessments of the residual functional capacity of the individuals involved, shall be designed to realistically evaluate the ability of a mentally impaired individual to engage in substantial gainful activity in a competitive workplace environment. Regulations establishing such revised criteria and listings shall be published no later than 120 days after the date of the enactment of this Act. 42 USC 421 note.  
  
Regulations.

(b)(1) Until such time as revised criteria have been established by regulation in accordance with subsection (a), no continuing eligibility review shall be carried out under section 221(i) of the Social Security Act, or under the corresponding requirements established for disability determinations and reviews under title XVI of such Act, with respect to any individual previously determined to be under a disability by reason of a mental impairment, if— 42 USC 421.  
42 USC 1381.

(A) no initial decision on such review has been rendered with respect to such individual prior to the date of the enactment of this Act, or

(B) an initial decision on such review was rendered with respect to such individual prior to the date of the enactment of this Act but a timely appeal from such decision was filed or was pending on or after June 7, 1983.

For purposes of this paragraph and subsection (c)(1) the term "continuing eligibility review", when used to refer to a review of a previous determination of disability, includes any reconsideration of or hearing on the initial decision rendered in such review as well as such initial decision itself, and any review by the Appeals Council of the hearing decision.

(2) Paragraph (1) shall not apply in any case where the Secretary determines that fraud was involved in the prior determination, or where an individual (other than an individual eligible to receive benefits under section 1619 of the Social Security Act) is determined by the Secretary to be engaged in substantial gainful activity (or gainful activity, in the case of a widow, surviving divorced wife, widower, or surviving divorced husband for purposes of section 202 (e) and (f) of such Act). 42 USC 1382h.  
  
42 USC 402.

(c)(1) Any initial determination that an individual is not under a disability by reason of a mental impairment and any determination that an individual is not under a disability by reason of a mental impairment in a reconsideration of or hearing on an initial disability determination, made or held under title II or XVI of the Social Security Act after the date of the enactment of this Act and prior to the date on which revised criteria are established by regulation in accordance with subsection (a), and any determination that an individual is not under a disability by reason of a mental impairment made under or in accordance with title II or XVI of such Act 42 USC 401,  
1381.

in a reconsideration of, hearing on, review by the Appeals Council of, or judicial review of a decision rendered in any continuing eligibility review to which subsection (b)(1) applies, shall be redetermined by the Secretary as soon as feasible after the date on which such criteria are so established, applying such revised criteria.

(2) In the case of a redetermination under paragraph (1) of a prior action which found that an individual was not under a disability, if such individual is found on redetermination to be under a disability, such redetermination shall be applied as though it had been made at the time of such prior action.

Claims.

(3) Any individual with a mental impairment who was found to be not disabled pursuant to an initial disability determination or a continuing eligibility review between March 1, 1981, and the date of the enactment of this Act, and who reapplies for benefits under title II or XVI of the Social Security Act, may be determined to be under a disability during the period considered in the most recent prior determination. Any reapplication under this paragraph must be filed within one year after the date of the enactment of this Act, and benefits payable as a result of the preceding sentence shall be paid only on the basis of the reapplication.

42 USC 401,  
1381.

#### NOTICE OF RECONSIDERATION; PREREVIEW NOTICE; DEMONSTRATION PROJECTS

42 USC 421.

SEC. 6. (a) Section 221(i) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(4) In any case in which the Secretary initiates a review under this subsection of the case of an individual who has been determined to be under a disability, the Secretary shall notify such individual of the nature of the review to be carried out, the possibility that such review could result in the termination of benefits, and the right of the individual to provide medical evidence with respect to such review."

42 USC 1383b.

(b) Section 1633 of such Act is amended by adding at the end thereof the following new subsection:

"(c) In any case in which the Secretary initiates a review under this title, similar to the continuing disability reviews authorized for purposes of title II under section 221(i), the Secretary shall notify the individual whose case is to be reviewed in the same manner as required under section 221(i)(4)."

42 USC 401.

*Supra.*

42 USC 421 note.

(c) The Secretary shall institute a system of notification required by the amendments made by subsections (a) and (b) as soon as is practicable after the date of the enactment of this Act.

42 USC 421 note.

(d) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, implement demonstration projects in which the opportunity for a personal appearance prior to a determination of ineligibility for persons reviewed under section 221(i) of the Social Security Act is substituted for the face to face evidentiary hearing required by section 205(b)(2) of such Act. Such demonstration projects shall be conducted in not fewer than five States, and shall also include disability determinations with respect to individuals reviewed under title XVI of such Act. The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than December 31, 1986.

42 USC 405.

42 USC 1381.  
Report.



(e) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, implement demonstration projects in which the opportunity for a personal appearance is provided the applicant prior to initial disability determinations under subsections (a), (c), and (g) of section 221 of the Social Security Act, and prior to initial disability determinations on applications for benefits under title XVI of such Act. Such demonstration projects shall be conducted in not fewer than five States. The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than December 31, 1986.

42 USC 421 note.

42 USC 421.

42 USC 1381.

Report.

## CONTINUATION OF BENEFITS DURING APPEAL

SEC. 7. (a)(1) Section 223(g)(1) of the Social Security Act is amended—

42 USC 423.

(A) in the matter following subparagraph (C), by striking out “and the payment of any other benefits under this Act based on such individual’s wages and self-employment income (including benefits under title XVIII),” and inserting in lieu thereof “, the payment of any other benefits under this title based on such individual’s wages and self-employment income, the payment of mother’s or father’s insurance benefits to such individual’s mother or father based on the disability of such individual as a child who has attained age 16, and the payment of benefits under title XVIII based on such individual’s disability,”; and

42 USC 1395.

(B) in clause (iii) by striking out “June 1984” and inserting in lieu thereof “June 1988”.

(2) Section 223(g)(3)(B) of such Act is amended by striking out “December 7, 1983” and inserting in lieu thereof “January 1, 1988”.

97 Stat. 803.

42 USC 423.

(b) Section 1631(a) of such Act is amended by adding at the end thereof the following new paragraph:

42 USC 1383.

“(7)(A) In any case where—

“(i) an individual is a recipient of benefits based on disability or blindness under this title,

“(ii) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and as a consequence such individual is determined not to be entitled to such benefits, and

“(iii) a timely request for review or for a hearing is pending with respect to the determination that he is not so entitled, such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits continued for an additional period beginning with the first month beginning after the date of the enactment of this paragraph for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (I) the month preceding the month in which a decision is made after such a hearing, or (II) the month preceding the month in which no such request for review or a hearing is pending.

“(B)(i) If an individual elects to have the payment of his benefits continued for an additional period under subparagraph (A), and the final decision of the Secretary affirms the determination that he is not entitled to such benefits, any benefits paid under this title pursuant to such election (for months in such additional period)

shall be considered overpayments for all purposes of this title, except as otherwise provided in clause (ii).

“(ii) If the Secretary determines that the individual’s appeal of his termination of benefits was made in good faith, all of the benefits paid pursuant to such individual’s election under subparagraph (A) shall be subject to waiver consideration under the provisions of subsection (b)(1).

“(C) The provisions of subparagraphs (A) and (B) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made on or after the date of the enactment of this paragraph, or prior to such date but only on the basis of a timely request for review or for a hearing.”.

Study.  
42 USC 423 note.

42 USC 423.

(c)(1) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, conduct a study concerning the effect which the enactment and continued operation of section 223(g) of the Social Security Act is having on expenditures from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund, and the rate of appeals to administrative law judges of unfavorable determinations relating to disability or periods of disability.

(2) The Secretary shall submit the results of the study under paragraph (1), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than July 1, 1986.

#### QUALIFICATIONS OF MEDICAL PROFESSIONALS EVALUATING MENTAL IMPAIRMENTS

42 USC 421.

SEC. 8. (a) Section 221 of the Social Security Act is amended by inserting after subsection (g) the following new subsection:

“(h) An initial determination under subsection (a), (c), (g), or (i) that an individual is not under a disability, in any case where there is evidence which indicates the existence of a mental impairment, shall be made only if the Secretary has made every reasonable effort to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable residual functional capacity assessment.”.

Ante, p. 1800.

(b) Section 1614(a)(3) of such Act (as amended by section 4 of this Act) is further amended by adding at the end thereof the following new subparagraph:

Supra.

42 USC 401.

Effective date.

42 USC 421 note.

“(H) In making determinations with respect to disability under this title, the provisions of section 221(h) shall apply in the same manner as they apply to determinations of disability under title II.”.

(c) The amendments made by this section shall apply to determinations made after 60 days after the date of the enactment of this Act.

#### CONSULTATIVE EXAMINATIONS; MEDICAL EVIDENCE

42 USC 421.

SEC. 9. (a)(1) Section 221 of the Social Security Act is amended by adding at the end thereof the following new subsection:

“(j) The Secretary shall prescribe regulations which set forth, in detail—

“(1) the standards to be utilized by State disability determination services and Federal personnel in determining when a



consultative examination should be obtained in connection with disability determinations;

“(2) standards for the type of referral to be made; and

“(3) procedures by which the Secretary will monitor both the referral processes used and the product of professionals to whom cases are referred.

Nothing in this subsection shall be construed to preclude the issuance, in accordance with section 553(b)(A) of title 5, United States Code, of interpretive rules, general statements of policy, and rules of agency organization relating to consultative examinations if such rules and statements are consistent with such regulations.”.

(2) The Secretary of Health and Human Services shall prescribe regulations required under section 221(j) of the Social Security Act not later than 180 days after the date of the enactment of this Act.

(b)(1) Section 223(d)(5) of the Social Security Act is amended by inserting “(A)” after “(5)” and by adding at the end thereof the following new subparagraph:

“(B) In making any determination with respect to whether an individual is under a disability or continues to be under a disability, the Secretary shall consider all evidence available in such individual’s case record, and shall develop a complete medical history of at least the preceding twelve months for any case in which a determination is made that the individual is not under a disability. In making any determination the Secretary shall make every reasonable effort to obtain from the individual’s treating physician (or other treating health care provider) all medical evidence, including diagnostic tests, necessary in order to properly make such determination, prior to evaluating medical evidence obtained from any other source on a consultative basis.”.

(2) The amendments made by this subsection shall apply to determinations made on or after the date of the enactment of this Act.

Regulations.  
42 USC 421 note.  
*Ante*, p. 1804.  
42 USC 423.

Effective date.  
42 USC 423 note.

#### UNIFORM STANDARDS

SEC. 10. (a) Section 221 of the Social Security Act (as amended by section 9 of this Act) is further amended by adding at the end thereof the following new subsection:

“(k)(1) The Secretary shall establish by regulation uniform standards which shall be applied at all levels of determination, review, and adjudication in determining whether individuals are under disabilities as defined in section 216(i) or 223(d).

“(2) Regulations promulgated under paragraph (1) shall be subject to the rulemaking procedures established under section 553 of title 5, United States Code.”.

(b) Section 1614(a)(3)(H) of such Act (as added by section 8 of this Act and amended by section 3 of this Act) is further amended by striking out “sections 221(h) and 223(d)(5)” and inserting in lieu thereof “sections 221(h), 221(k), and 223(d)(5)”.

42 USC 421.  
42 USC 416, 423.  
*Ante*, p. 1804.

#### PAYMENT OF COSTS OF REHABILITATION SERVICES

SEC. 11. (a)(1) The first sentence of section 222(d)(1) of the Social Security Act is amended—

(A) by striking out “into substantial gainful activity”; and

(B) by striking out “which result in their performance of substantial gainful activity which lasts for a continuous period of nine months” and inserting in lieu thereof the following: “(i)

42 USC 422.

42 USC 425.

in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for a continuous period of nine months, (ii) in cases where such individuals receive benefits as a result of section 225(b) (except that no reimbursement under this paragraph shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month in which his or her entitlement to such benefits ceases, whichever first occurs), and (iii) in cases where such individuals, without good cause, refuse to continue to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation".

*Ante*, p. 1805.

(2) The second sentence of section 222(d)(1) of such Act is amended by striking out "of such individuals to substantial gainful activity" and inserting in lieu thereof "of an individual to substantial gainful activity, the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation,".

42 USC 1382d.

(b)(1) The first sentence of section 1615(d) of such Act is amended by striking out "if such services result in their performance of substantial gainful activity which lasts for a continuous period of nine months" and inserting in lieu thereof the following: "(1) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for a continuous period of nine months, (2) in cases where such individuals receive benefits as a result of section 1631(a)(6) (except that no reimbursement under this subsection shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month with which his or her entitlement to such benefits ceases, whichever first occurs), and (3) in cases where such individuals, without good cause, refuse to continue to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation".

42 USC 1383.

(2) The second sentence of section 1615(d) of such Act is amended by inserting after "The determination" the following: "that the vocational rehabilitation services contributed to the successful return of an individual to substantial gainful activity, the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation, and the determination".

Effective date.

42 USC 422 note.

(c) The amendments made by this section shall apply with respect to individuals who receive benefits as a result of section 225(b) or section 1631(a)(6) of the Social Security Act, or who refuse to continue to accept rehabilitation services or fail to cooperate in an approved vocational rehabilitation program, in or after the first month following the month in which this Act is enacted.

## ADVISORY COUNCIL STUDY

42 USC 907 note.

SEC. 12. (a) The Secretary of Health and Human Services shall appoint the members of the next Advisory Council on Social



Security pursuant to section 706 of the Social Security Act prior to June 1, 1985. 42 USC 907.

(b)(1) The Advisory Council shall include in its review and report, studies and recommendations with respect to the medical and vocational aspects of disability, including studies and recommendations relating to— Report.

(A) the effectiveness of vocational rehabilitation programs for recipients of disability insurance benefits or supplemental security income benefits;

(B) the question of using specialists for completing medical and vocational evaluations at the State agency level in the disability determination process, including the question of requiring, in cases involving impairments other than mental impairments, that the medical portion of each case review (as well as any applicable assessment of residual functional capacity) be completed by an appropriate medical specialist employed by the State agency before any determination can be made with respect to the impairment involved;

(C) alternative approaches to work evaluation in the case of applicants for benefits based on disability under title XVI and recipients of such benefits undergoing reviews of their cases, including immediate referral of any such applicant or recipient to a vocational rehabilitation agency for services at the same time he or she is referred to the appropriate State agency for a disability determination; 42 USC 1381.

(D) the feasibility and appropriateness of providing work evaluation stipends for applicants for and recipients of benefits based on disability under title XVI in cases where extended work evaluation is needed prior to the final determination of their eligibility for such benefits or for further rehabilitation and related services;

(E) the standards, policies, and procedures which are applied or used by the Secretary of Health and Human Services with respect to work evaluations in order to determine whether such standards, policies, and procedures will provide appropriate screening criteria for work evaluation referrals in the case of applicants for and recipients of benefits based on disability under title XVI; and

(F) possible criteria for assessing the probability that an applicant for or recipient of benefits based on disability under title XVI will benefit from rehabilitation services, taking into consideration not only whether the individual involved will be able after rehabilitation to engage in substantial gainful activity but also whether rehabilitation services can reasonably be expected to improve the individual's functioning so that he or she will be able to live independently or work in a sheltered environment.

(2) For purposes of this subsection, "work evaluation" includes (with respect to any individual) a determination of—

(A) such individual's skills,

(B) the work activities or types of work activity for which such individual's skills are insufficient or inadequate,

(C) the work activities or types of work activity for which such individual might potentially be trained or rehabilitated,

(D) the length of time for which such individual is capable of sustaining work (including, in the case of the mentally

impaired, the ability to cope with the stress of competitive work), and

(E) any modifications which may be necessary, in work activities for which such individual might be trained or rehabilitated, in order to enable him or her to perform such activities.

(c) The Advisory Council may convene task forces of experts to consider and comment upon specialized issues.

**QUALIFYING EXPERIENCE FOR APPOINTMENT OF CERTAIN STAFF  
ATTORNEYS TO ADMINISTRATIVE LAW JUDGE POSITIONS**

Report.

SEC. 13. The Secretary of Health and Human Services shall, within 120 days after the date of enactment of this Act, submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on actions taken by the Secretary to establish positions which enable staff attorneys to gain the qualifying experience and quality of experience necessary to compete for the position of administrative law judge under section 3105 of title 5, United States Code.

**SUPPLEMENTAL SECURITY INCOME BENEFITS FOR INDIVIDUALS WHO  
PERFORM SUBSTANTIAL GAINFUL ACTIVITY DESPITE SEVERE MEDICAL  
IMPAIRMENT**

42 USC 1382h  
note.

SEC. 14. (a) Section 201(d) of the Social Security Disability Amendments of 1980 is amended by striking out "shall remain in effect only for a period of three years after such effective date" and inserting in lieu thereof "shall remain in effect only through June 30, 1987".

42 USC 1382h.

(b) Section 1619 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(c) The Secretary of Health and Human Services and the Secretary of Education shall jointly develop and disseminate information, and establish training programs for staff personnel, with respect to the potential availability of benefits and services for disabled individuals under the provisions of this section. The Secretary of Health and Human Services shall provide such information to individuals who are applicants for and recipients of benefits based on disability under this title and shall conduct such programs for the staffs of the district offices of the Social Security Administration. The Secretary of Education shall conduct such programs for the staffs of the State Vocational Rehabilitation agencies, and in cooperation with such agencies shall also provide such information to other appropriate individuals and to public and private organizations and agencies which are concerned with rehabilitation and social services or which represent the disabled."

**FREQUENCY OF CONTINUING ELIGIBILITY REVIEWS**

Regulations.  
42 USC 421 note.

SEC. 15. The Secretary of Health and Human Services shall promulgate final regulations, within 180 days after the date of the enactment of this Act, which establish the standards to be used by the Secretary in determining the frequency of reviews under section 221(i) of the Social Security Act. Until such regulations have been issued as final regulations, no individual may be reviewed more than once under section 221(i) of the Social Security Act.

42 USC 421.



DETERMINATION AND MONITORING OF NEED FOR REPRESENTATIVE  
PAYEE

SEC. 16. (a) Section 205(j) of the Social Security Act is amended by inserting “(1)” after “(j)” and by adding at the end thereof the following new paragraphs: 42 USC 405.

“(2) Any certification made under paragraph (1) for payment to a person other than the individual entitled to such payment must be made on the basis of an investigation, carried out either prior to such certification or within forty-five days after such certification, and on the basis of adequate evidence that such certification is in the interest of the individual entitled to such payment (as determined by the Secretary in regulations). The Secretary shall ensure that such certifications are adequately reviewed.

“(3)(A) In any case where payment under this title is made to a person other than the individual entitled to such payment, the Secretary shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Secretary shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

“(B) Subparagraph (A) shall not apply in any case where the other person to whom such payment is made is a parent or spouse of the individual entitled to such payment who lives in the same household as such individual. The Secretary shall require such parent or spouse to verify on a periodic basis that such parent or spouse continues to live in the same household as such individual.

“(C) Subparagraph (A) shall not apply in any case where the other person to whom such payment is made is a State institution. In such cases, the Secretary shall establish a system of accountability monitoring for institutions in each State.

“(D) Subparagraph (A) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the other person to whom such payment is made is the institution.

“(E) Notwithstanding subparagraphs (A), (B), (C), and (D), the Secretary may require a report at any time from any person receiving payments on behalf of another, if the Secretary has reason to believe that the person receiving such payments is misusing such payments.

“(4)(A) The Secretary shall make an initial report to each House of the Congress on the implementation of paragraphs (2) and (3) within 270 days after the date of the enactment of this paragraph. Report.

“(B) The Secretary shall include as a part of the annual report required under section 704, information with respect to the implementation of paragraphs (2) and (3), including the number of cases in which the payee was changed, the number of cases discovered where there has been a misuse of funds, how any such cases were dealt with by the Secretary, the final disposition of such cases, including any criminal penalties imposed, and such other information as the Secretary determines to be appropriate.” 42 USC 904.

(b) Section 1631(a)(2) of such Act is amended by inserting “(A)” after “(2)” and by adding at the end thereof the following new subparagraphs: 42 USC 1383.

“(B) Any determination made under subparagraph (A) that payment should be made to a person other than the individual or spouse

entitled to such payment must be made on the basis of an investigation, carried out either prior to such determination or within forty-five days after such determination, and on the basis of adequate evidence that such determination is in the interest of the individual or spouse entitled to such payment (as determined by the Secretary in regulations). The Secretary shall ensure that such determinations are adequately reviewed.

“(C)(i) In any case where payment is made under this title to a person other than the individual or spouse entitled to such payment, the Secretary shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Secretary shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

“(ii) Clause (i) shall not apply in any case where the other person to whom such payment is made is a parent or spouse of the individual entitled to such payment who lives in the same household as such individual. The Secretary shall require such parent or spouse to verify on a periodic basis that such parent or spouse continues to live in the same household as such individual.

“(iii) Clause (i) shall not apply in any case where the other person to whom such payment is made is a State institution. In such cases, the Secretary shall establish a system of accountability monitoring for institutions in each State.

“(iv) Clause (i) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the other person to whom such payment is made is the institution.

“(v) Notwithstanding clauses (i), (ii), (iii), and (iv), the Secretary may require a report at any time from any person receiving payments on behalf of another, if the Secretary has reason to believe that the person receiving such payments is misusing such payments.

Report.

“(D) The Secretary shall make an initial report to each House of the Congress on the implementation of subparagraphs (B) and (C) within 270 days after the date of the enactment of this subparagraph. The Secretary shall include in the annual report required under section 704, information with respect to the implementation of subparagraphs (B) and (C), including the same factors as are required to be included in the Secretary’s report under section 205(j)(4)(B).”

42 USC 904.

*Ante*, p. 1809.

42 USC 1383a.

(c)(1) Section 1632 of the Social Security Act is amended by inserting “(a)” after “Sec. 1632.” and by adding at the end thereof the following new subsection:

“(b)(1) Any person or other entity who is convicted of a violation of any of the provisions of paragraphs (1) through (4) of subsection (a), if such violation is committed by such person or entity in his role as, or in applying to become, a payee under section 1631(a)(2) on behalf of another individual (other than such person’s eligible spouse), in lieu of the penalty set forth in subsection (a)—

42 USC 1383.

“(A) upon his first such conviction, shall be guilty of a misdemeanor and shall be fined not more than \$5,000 or imprisoned for not more than one year, or both; and

“(B) upon his second or any subsequent such conviction, shall be guilty of a felony and shall be fined not more than \$25,000 or imprisoned for not more than five years, or both.

“(2) In any case in which the court determines that a violation described in paragraph (1) includes a willful misuse of funds by such



person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.

“(3) Any person or entity convicted of a felony under this section or under section 208 may not be certified as a payee under section 1631(a)(2).”

42 USC 408.  
*Ante*, p. 1810.  
 42 USC 408.

(2) Section 208 of such Act is amended by adding at the end thereof the following unnumbered paragraphs:

“Any person or other entity who is convicted of a violation of any of the provisions of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a certified payee under section 205(j) on behalf of another individual (other than such person's spouse), upon his second or any subsequent such conviction shall, in lieu of the penalty set forth in the preceding provisions of this section, be guilty of a felony and shall be fined not more than \$25,000 or imprisoned for not more than five years, or both. In the case of any violation described in the preceding sentence, including a first such violation, if the court determines that such violation includes a willful misuse of funds by such person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.

*Ante*, p. 1809.

“Any individual or entity convicted of a felony under this section or under section 1632(b) may not be certified as a payee under section 205(j).”

*Ante*, p. 1810.

(d) The amendments made by this section shall become effective on the date of the enactment of this Act, and, in the case of the amendments made by subsection (c), shall apply with respect to violations occurring on or after such date.

Effective date.  
 42 USC 405 note.

#### MEASURES TO IMPROVE COMPLIANCE WITH FEDERAL LAW

SEC. 17. (a)(1) Section 221(b)(1) of the Social Security Act is amended to read as follows:

Investigation.  
 42 USC 421.

“(b)(1)(A) Upon receiving information indicating that a State agency may be substantially failing to make disability determinations in a manner consistent with regulations and other written guidelines issued by the Secretary, the Secretary shall immediately conduct an investigation and, within 21 days after the date on which such information is received, shall make a preliminary finding with respect to whether such agency is in substantial compliance with such regulations and guidelines. If the Secretary finds that an agency is not in substantial compliance with such regulations and guidelines, the Secretary shall, on the date such finding is made, notify such agency of such finding and request assurances that such agency will promptly comply with such regulations and guidelines.

“(B)(i) Any agency notified of a preliminary finding made pursuant to subparagraph (A) shall have 21 days from the date on which such finding was made to provide the assurances described in subparagraph (A).

“(ii) The Secretary shall monitor the compliance with such regulations and guidelines of any agency providing such assurances in accordance with clause (i) for the 30-day period beginning on the day after the date on which such assurances have been provided.

“(C) If the Secretary determines that an agency monitored in accordance with clause (ii) of subparagraph (B) has not substantially complied with such regulations and guidelines during the period for

which such agency was monitored, or if an agency notified pursuant to subparagraph (A) fails to provide assurances in accordance with clause (i) of subparagraph (B), the Secretary shall, within 60 days after the date on which a preliminary finding was made with respect to such agency under subparagraph (A), (or within 90 days after such date, if, at the discretion of the Secretary, such agency is granted a hearing by the Secretary on the issue of the noncompliance of such agency) make a final determination as to whether such agency is substantially complying with such regulations and guidelines. Such determination shall not be subject to judicial review.

“(D)(i) If the Secretary makes a final determination pursuant to subparagraph (C) with respect to any agency that the agency is not substantially complying with such regulations and guidelines, the Secretary shall, as soon as possible but not later than 180 days after the date of such final determination, make the disability determinations referred to in subsection (a)(1), complying with the requirements of paragraph (3) to the extent that such compliance is possible within such 180-day period. In order to carry out this subparagraph, the Secretary shall, as the Secretary finds necessary, exceed any applicable personnel ceilings and waive any applicable hiring restrictions. In addition, to the extent feasible within the 180-day period after the final determination, the Secretary, in conjunction with the Secretary of Labor, shall assure the statutory protections of State agency employees not hired by the Secretary.

“(ii) During the 180-day period specified in clause (i), the Secretary shall take such actions as may be necessary to assure that any case with respect to which a determination referred to in subsection (a)(1) was made by an agency, during the period for which such agency was not in substantial compliance with the applicable regulations and guidelines, was decided in accordance with such regulations and guidelines.”.

42 USC 421.

(2) Section 221(a)(1) of such Act is amended by striking out “subsection (b)(1)” and inserting in lieu thereof “subsection (b)(1)(C)”.

(3)(A) Section 221(b)(3)(A) of such Act is amended by striking out “The Secretary” and inserting in lieu thereof “Except as provided in subparagraph (D)(i) of paragraph (1), the Secretary”.

(B) Section 221(b)(3)(B) of such Act is amended by striking out “The Secretary” and inserting in lieu thereof “Except as provided in subparagraph (D)(i) of paragraph (1), the Secretary”.

(4) Section 221(d) of such Act is amended by striking out “Any individual” and inserting in lieu thereof “Except as provided in subsection (b)(1)(D), any individual”.

Effective date.  
42 USC 421 note.

(b) The amendments made by subsection (a) of this section shall become effective on the date of the enactment of this Act and shall expire on December 31, 1987. The provisions of the Social Security Act amended by subsection (a) of this section (as such provisions were in effect immediately before the date of the enactment of this Act) shall be effective after December 31, 1987.

42 USC 1305.



## SEPARABILITY

SEC. 18. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

42 USC 1303  
note.

Approved October 9, 1984.

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LEGISLATIVE HISTORY—H.R. 3755 (S. 476):

HOUSE REPORTS: No. 98-618 (Comm. on Ways and Means) and  
No. 98-1039 (Comm. of Conference).

SENATE REPORT No. 98-466 accompanying S. 476 (Comm. on Finance).  
CONGRESSIONAL RECORD, Vol. 130 (1984):

Mar. 27, considered and passed House.

May 22, considered and passed Senate, amended, in lieu of S. 476.

Sept. 19, House and Senate agreed to Conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 20, No. 41 (1984):  
Oct. 9, Presidential statement.



# SOCIAL SECURITY DISABILITY BENEFITS REFORM ACT OF 1984

MARCH 14, 1984.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means,  
submitted the following

## R E P O R T

[To accompany H.R. 3755]

[Including the cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 3755) to amend title II of the Social Security Act to provide for reform in the disability determination process, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendment to the text of the bill is a complete substitute therefor and appears in italic type in the reported bill.

The title of the bill is amended to reflect the amendment to the text of the bill.

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## SOCIAL SECURITY DISABILITY BENEFITS REFORM ACT OF 1984

### I. Purpose and Scope

The committee's bill also amends Title II of the Social Security Act to provide for necessary reforms in the administration of the social security disability insurance program. The disability insurance program has attracted substantial Congressional attention over the last two years, primarily because of the numbers of beneficiaries whose benefits have been terminated. The review of current beneficiaries that has produced these terminations was mandated by Congress, but was accelerated in pace in March, 1981. There has been no suggestion that those receiving disability benefits should never be examined again, but the committee believes that the process over the last several years has resulted in erroneous termination of benefits for at least some people.

Therefore, the committee's bill addresses three major areas where reform appears to be most critically needed: in the standards for determining eligibility for disability benefits, both for new applicants and more particularly for current beneficiaries being reviewed; in the structure of the administrative process itself; and in the way in which the Social Security Administration makes disability policy, both on its own initiative and in conjunction with rulings of the Federal courts. There are in addition several miscellaneous provisions concerning payments to vocational rehabilitation agencies, publication of policies concerning consultative medical examinations, and establishment of new positions for social security staff attorneys.

The overall purpose of the bill is, first, to clarify statutory guidelines for the determination process to insure that no beneficiary loses eligibility for benefits as a result of careless or arbitrary decision-making by the Federal government. Second, the bill is intended to provide a more humane and understandable application and appeal process for disability applicants and beneficiaries appealing termination of their benefits. Finally, the bill seeks to standardize the Social Security Administration's policy-making procedures through the notice and comment procedures of the Administrative Procedures Act, and to make those procedures conform with the standard practices of Federal law, through acquiescence in Federal Court of Appeals rulings.

The committee is deeply concerned about the erosion of public faith and confidence in the social security disability programs, and in the agency as part of the Federal government, that has occurred as a result of the changes in policies over the last several years. The guidelines established in this bill appear to the committee to be the best way to restore confidence in the program. The committee believes it is crucial to continued public support for the social security program as a whole for the public to understand that the program will be administered according to the law rather than by constantly shifting and possibly arbitrary policies.



## II. Summary of Provisions

### *Standards of Disability*

#### *Standard of review for terminations of disability benefits (medical improvement)*

Section 101 of the bill requires the continuation of benefits for those individuals whose conditions have not medically improved to the point of ability to perform SGA, with the following exceptions:

(a) benefits may be terminated if new evidence shows the beneficiary has benefited from advances in medical therapy or technology or from any vocational therapy to the point of ability to perform SGA; and

(b) benefits may be terminated if new evidence (including new diagnostic or evaluation techniques not available or used at the original determination) shows the impairment or impairments to be less severe than originally thought.

Section 101 also provides for termination of benefits whether or not the impairment has improved if the person is currently working at the substantial gainful activity (SGA) level, or if the prior determination of entitlement to benefits was either clearly erroneous at the time it was made, or was fraudulently obtained. SSA would be authorized to secure additional medical evidence to reconstruct initial decisions in cases where there is no medical evidence supporting the initial decision.

#### *Study on evaluation of pain*

Section 102 requires the Secretary, in conjunction with the National Academy of Sciences, to conduct a study concerning the questions of using subjective evidence of pain in determining whether a person is under a disability, and the state of the art of preventing, reducing or coping with pain. A report is to be submitted to the Committee on Ways and Means and the Senate Committee on Finance by April 1, 1985.

#### *Multiple impairments*

Section 103 provides that in determinations of disability, the Secretary must consider the combined effect of all of an individual's impairments whether or not each or any impairment would alone be severe enough to qualify the person for benefits.

### *Disability Determination Process*

#### *Temporary moratorium on mental improvement reviews*

Section 201 provides for a temporary delay on reviews of all mental impairment disabilities until the listings for mental impairments have been revised in consultation with the Advisory Council, and are published in final form in regulations. Regulations must be published no later than 9 months after the date of enactment. The delay also would be imposed on review of all CDI mental impairment cases after June 7, 1983.

### ***Face-to-face evidentiary hearing***

Section 202 provides for the implementation, no later than January 1, 1985, of face-to-face evidentiary interviews at the State agency level for medical termination cases. Under this provision, the State agency would send the beneficiary a preliminary notice of an unfavorable decision and the claimant would have 30 days in which to request a face-to-face meeting before a formal determination is made. The reconsideration level would be abolished for all initial CDI decisions completed after January 1, 1985.

Section 205 also requires the Secretary to initiate demonstration projects with respect to face-to-face evidentiary meetings at the initial level of State agency determination for new applicants and report to the Congress by April 1, 1984, and projects begun no later than July 1, 1984.

### ***Payments of benefits during appeal***

Section 203 provides on a permanent basis for the continuation of benefits during appeal in all CDI cases through the decision of the Administrative Law Judge. Where the ALJ's decision is adverse to the beneficiary, such benefit payments would be subject to recoupment as under present law. The provision also requires the Secretary to report to Congress on the impact of the provision by July 1, 1986.

### ***Qualifications of medical professionals***

Section 204 provides that no determination that a person is not under a disability be made with respect to mental impairments until a psychiatrist or psychologist employed by the State agency has completed the medical portion of the case review as well as the assessment of residual functional capacity.

### ***Consultative examinations***

Section 205 provides that regulations be promulgated regarding consultative examinations.

## ***Miscellaneous Provisions***

### ***Application of uniform standards for disability determinations***

Section 301 provides that the notice and comment provisions of Section 553 of the Administrative Procedures Act would apply to benefit programs under Title II. The provision leaves in place the existing exceptions in Section 553 of the APA referring to the issuance of interpretive rulings, as well as purely administrative procedures.

### ***SSA compliance with certain Federal court decisions***

Section 302 requires SSA to either apply the decisions of circuit courts of appeal to at least all beneficiaries residing within States within the circuit, or appeal the decision to the Supreme Court. This provision applies to circuit court opinions issued after the date of enactment as well as to those opinions which the Secretary still has the opportunity to appeal to the Supreme Court as of the date of enactment.

### *Payment from trust funds for costs of rehabilitation services*

Section 303 repeals the requirement in those cases where there is a medical recovery that a disabled beneficiary must perform 9 months of SGA to qualify the vocational rehabilitation provider for reimbursement. In addition, payment for services to VR providers would be authorized for beneficiaries who without good cause refuse to continue to accept services or fail to cooperate with the rehabilitation process.

### *Advisory Council on Medical Aspects of Disability*

Section 304 creates an Advisory Council on Medical Aspects of Disability composed of independent medical and vocational experts to provide advice and recommendations to the Secretary on disability standards, policies and procedures. The Council would include 10 members to be appointed by the Secretary (with the Commissioner of Social Security an ex officio member) and must include at least one psychiatrist, one rehabilitation psychologist and one medical social worker.

The Council would be authorized to periodically convene a larger representative group to assure the input of appropriate professional and consumer organizations, and would also be authorized to set up temporary short-term task forces to examine some specialized issues.

Section 304 further provides that the Council must be appointed no later than 60 days after the enactment (to assure the timely participation of the Council in the review of the mental impairment listings) and would expire on December 31, 1985.

### *Staff attorneys*

Section 305 requires the Secretary of HHS to establish higher grade attorney positions to enable staff attorneys to achieve qualifying experience necessary to be appointed to ALJ positions.

### *Effective Date*

Except as otherwise provided, these provisions will apply only with respect to cases involving disability determinations pending in HHS or in court on or after the date of enactment.

### *Supplement Security Income (SSI) Disability Changes*

The bill would make the same changes in the SSI disability program as the bill makes in the Social Security Disability Insurance program. In addition, the bill would extend for two and one-half years, through June 30, 1986, the temporary authority in section 1619 of the Social Security Act that provides for the continuation of SSI benefits and/or Medicaid for disabled recipients who are able to work in spite of their impairments. As related to the SSI disability program, the Advisory Council on Disability would also be required to consider alternative approaches to the use of work evaluation in determining eligibility for SSI disability benefits and to reexamine the definition of a successful rehabilitation of an SSI recipient to include the ability of the severely disabled to work in a sheltered environment and live independently.



### III. Explanation of Provisions

#### A. Standards of disability (secs. 101-103 of the bill)

##### 1. Overview

Sections 101-103 of the bill are designed to clarify the criteria that must be used in evaluating whether new applicants or current beneficiaries are disabled. The criteria laid out in present law are few, and brief:

(1) Disability is defined in Section 223(d)(1) of the Social Security Act as the inability to engage in any substantial gainful activity by reason of a medically determinable impairment which can be expected to result in death or to last at least 12 months;

(2) A second sentence added in 1967 expanded on this definition with respect to the type of work an individual must be unable to perform, i.e., not only his previous work but, considering his age, education and work experience, any work existing in the national economy, regardless of the existence of any specific job he might actually be hired for.

The committee does not intend to alter the current definition, which embodies the intent of Congress that only those who are verifiably unable to work are to be found eligible for disability benefits. However, it must be recognized that determining inability to work in each individual case must ultimately rest to some degree on the subjective judgment of the examiner.

In response to this inherent subjectivity, the disability determination process has developed into an elaborate system of checks and balances designed to prevent individual judgment from outweighing national policies defining who is totally disabled. The initial decision is made according to the submitted clinical findings, a deliberate paper decision that avoids as much as possible the personal influence of either the claimant or of his physician. The examiner's decision is then subject to several different kinds of reviews, through the quality assurance system and through a multi-layered appeals system, in an attempt to ensure as much objectivity as possible in an inherently subjective decision.

The process each examiner follows in making disability decisions at the State agency level is known as the "sequential evaluation" process. After checking to see whether the claimant is currently working at the substantial gainful activity (SGA) level, the examiner next must determine whether the individual has a severe impairment; if he does not, the process goes no further.

SSA has been criticized for using the severe/non-severe test at this stage of the process as a way to terminate benefits, or deny initial applications without fully evaluating the person's real ability to work. This criticism has been particularly strong in the case of multiple impairments, because the regulations require that where the person has several impairments, of which none are severe, no disability can be found.

At this step and later on in the process, current policy is to take subjective evidence of pain into account only if objective medical data, such as laboratory tests and documented case history, show a specific impairment that can reasonably be concluded to be causing the pain. This policy is an attempt to ensure that a finding of dis-



ability is based only on "medically determinable" impairments, as required by the statutory definition, and to reduce the level of subjectivity inherent in the disability determination.

After finding that the person has a severe impairment, the examiner must determine whether that impairment matches the listings of disabling impairments or if, in combination with other less severe conditions, the total impairment equals the severity level in the listings (the "meets or equals" test). If it does not, the examiner must assess the person's "residual functional capacity"—ability to do either his past work or any other work in the national economy. SSA evaluates work capacity in a variety of ways, using all available evidence of work or productive activity in sheltered workshops, home settings and competitive work environments.

This evaluation is difficult to make for beneficiaries who have been receiving benefits for some time, particularly for those with mental impairments, whose illness may allow certain types of activity with limited circumstances, but possible not under the day to day pressure of a real job. SSA has been particularly criticized for not giving sufficient weight to the longitudinal medical and work history of mentally impaired claimants.

In summary, SSA's current policies for interpreting the definition of disability place a heavy emphasis on objective evidence to support a finding of disability. The sequential evaluation is designed to create a series of clear decisions for the examiner, particularly as to the severity of the impairment, which are to be made based only on verifiable clinical data, so that the subjectivity of the decision can be kept to a minimum.

While this process allows tighter control over the number of people allowed benefits, and therefore over program costs, it can result in denial of benefits for people who cannot be expected to work in view of their total condition. The definition of disability clearly states that benefits are to be paid to those who are unable to work because of severe impairment, not merely to those who meet a certain impairment level and incidentally are unable to work. The current procedures thus represent a compromise between complete evaluation of every individual's particular circumstances, on one hand, and, on the other, a completely objective "screen" of characteristics which must be satisfied in order to find a person disabled.

The committee wishes to reaffirm that the purpose of the disability insurance program is to provide benefits only for those who are unable to work. It is therefore completely appropriate for the Social Security Administration to periodically review beneficiaries who are not deemed to be permanently disabled, in order to ensure that the law is being carried out.

However, the committee is concerned that the consideration of eligibility for disability benefits be conducted using criteria that clearly reflect the intent of Congress that all those who are unable to work receive benefits. It is of particular concern that the Social Security Administration has been criticized for basing terminations of benefits solely and erroneously on the judgment that the person's medical impairment is "slight," according to very strict criteria, and is therefore not disabling, without making any further evaluation of the person's ability to work.

The committee believes that in the interests of reasonable administrative flexibility and efficiency, a determination that a person is not disabled may be based on a judgment that the person has no impairment, or that the impairment or combination of impairments are slight enough to warrant a presumption that the person's work ability is not seriously affected. The current "sequential evaluation process" allows such a determination, and the committee does not wish to eliminate or seriously impair use of that process. However, the committee notes that the Secretary has already planned to re-evaluate the current criteria for non-severe impairments, and urges that all due consideration be given to revising those criteria to reflect the real impact of impairments upon the ability to work.

It is also assumed that the length of time the beneficiary has been on the benefit rolls will be taken into account in assessing the person's residual functional capacity. The committee is concerned that the periodic review of beneficiaries who are over age 50, and who have been on the benefit rolls for some period of time, may result in termination of benefits for many in that age group who realistically cannot be expected to re-enter the work force given their age and length of time in receipt of benefits. Therefore, the committee directs the Secretary to re-evaluate the consideration given in the determination process for such beneficiaries to past relevant work, in order to ensure that older beneficiaries who have been receiving benefits for several years are carefully reviewed for realistic ability to work.

The committee is also concerned that the evaluation of the person's ability to work be made in a context that accurately reflects the capacity to work in a normal, competitive environment. Such an evaluation does not necessarily require a full "work evaluation" by a vocational expert in each case, although such evaluations are desirable and should be used wherever feasible where the additional information provided by such evaluations would be helpful in deciding close cases. The committee particularly urges that such evaluations should be used if at all possible in cases of mental impairment, where necessary to aid in determining eligibility in "borderline" cases, at the point in the sequential evaluation process where such evaluations would normally be done under current policy.

It is also important in such cases to evaluate the person's entire work history, rather than to examine only recent evidence of work activity, in order to determine whether the person can really engage in substantial gainful activity. The committee emphasizes that in any evaluation of work activity, the presence of work in a sheltered setting or workshop cannot in and of itself be used as conclusive evidence of ability to work at the substantial gainful activity level. Such work may be used in conjunction with other evidence that the beneficiary or claimant is not disabled, but benefits should not be denied simply because of sheltered work experience.

The committee emphasizes that the foregoing discussion does not constitute any change in the current definition of disability, but rather is a clarification of the intent of Congress that disability benefits should be granted to those who are unable to work because of a medically determinable impairment. Sections 101 and 103 of the bill provide statutory standards for determining disability: sec-



tion 101 establishes specific criteria for re-examination of current beneficiaries, while section 103 establishes criteria for multiple impairment cases both on initial application and on re-examination. Section 102 mandates a study and recommendations on the possible use of subjective evidence of pain in determinations of disability, with a view toward establishing standards in this area through legislation after consideration of the report. Taken together, these new statutory standards will provide much needed clarification of the law and of Congressional intent.

The committee also wishes to emphasize that the social security disability insurance program is a Federal social insurance program, fully funded by the disability insurance trust fund (including State and Federal administrative costs), and administered by the Social Security Administration. While disability determinations are made by State disability agencies under voluntary agreements with the Department of Health and Human Services, policies for making these evaluations are and must be established at the Federal level, for implementation on a nationwide basis.

The committee is aware of the actions several States have taken in response to conflicting interpretations of the applicable provisions of law relating to the termination of benefits—actions which, in effect, represent a failure to comply with certain policies issued by SSA. While such actions must be regarded as questionable, the current confusion that has given rise to them is understandable and creates a compelling need for congressional clarification. We believe the relevant issues would be resolved by this bill and that, as a result, the basis for any such actions would be eliminated.

The committee bill makes clear what the law is with regard to certain areas of contention such as the standard for medical improvement. With respect to the area that is not so clarified, i.e., the use of subjective evidence of pain in disability determinations, the intent of Congress is clear: upon receipt of information adequate to form a reasonable basis for legislating, Congress will enact a specific policy concerning pain; until that time, no change in policy by the Social Security Administration is mandated by this bill.

## ***2. Standard of review for terminations of disability benefits (sec. 101 of the bill)***

Section 101 of the bill provides for the first time in the social security statute a specific standard that must be met before a disability beneficiary can be found to be not disabled. SSA has always scheduled a certain percentage of disability beneficiaries for re-examination to determine whether they are still disabled. The statute contains no guidelines for appropriate criteria to govern these re-examinations, other than the definition of disability.

From 1969 to 1976, SSA's policy, established originally by an administrative law judge in one hearing, was to not terminate benefits for anyone whose condition had not improved since the initial determination of eligibility. This policy was reversed in 1976 in internal SSA directives. Shortly thereafter, the Supreme Court, in *Matthews v. Eldridge*, agreed with the agency that the burden of proving continuing eligibility for benefits was on the beneficiary.

However, possible as a result of the pre-1975, a decreasing number of people seemed to be leaving the benefit rolls to return

to work in the 1970's—the rate of benefit terminations due to recovery or return to work fell from 32 percent per thousand beneficiaries in 1967 to 16 persons per thousand in 1975. As a result, Congressional interest was expressed, beginning in 1978, in requiring SSA to look at people who had been receiving benefits for a long time to see if they were still eligible. SSA's standard procedures for re-examining only a small number of beneficiaries seemed to be inadequate in light of the declining number of benefit terminations for return to work.

The 1980 Social Security Disability Amendments made a number of significant changes in disability program operations. Responding to the need for more effective management of the program, the legislation required a dramatic increase in the amount of management review and oversight of the program, with the objective of tightening central Federal control over State agency and ALJ decisions, and re-invigorating ongoing review of current beneficiaries. Of particular concern in connection with Section 901 of the bill was the provision requiring review at least once every three years of all beneficiaries not permanently disabled, beginning in January, 1982.

However, the Department of Health and Human Services moved up the date of implementation of this provision, and accelerated the rate of review of current beneficiaries beyond the schedule required in the 1980 Amendments. Beginning in March 1981, SSA began sending out about three times the normal number of CDI cases: about 160,000 were done in FY 1981, 496,771 in FY 1982, and 640,000 were budgeted for FY 1983 prior to the Secretary's new initiative to slow down the review process announced in June, 1983.

The rate of terminations in these CDI cases at the initial level currently is about 45 percent, which is very close to the rate for reexaminations done in previous years. However, the types of cases being examined in the accelerated CDI process are different from the relative few cases SSA used to designate for re-examination because they had great potential for medical recovery.

The new caseload consists in large part of beneficiaries who were not scheduled for re-examination before, and who in many cases were found disabled several years ago, during and after the inauguration of the SSI program, when the decision criteria may have been less precise than those being used today. The magnitude of the CDI initiatives has meant that a very large number of the cases SSA considers were wrongly allowed (either by the original State examiner or by an ALJ overturning the State agency) are being re-examined for the first time since the policy change on medical improvement in 1976.

These re-evaluations are based on current standards and medical criteria which are in many cases more clear-cut and exact than the standards on which benefits were initially based, and reflect improvements in medical technology and treatment. Moreover, the overall "adjudicative climate" has been generally more rigorous than in earlier years, so that re-examined beneficiaries, now being looked at as if they are new applicants, will have more rigorous standards applied than in their initial determination. For example, beneficiaries who originally were allowed benefits because their combination of impairments roughly approximated the level re-



quired by the medical listings ("equals the listings"), are now more likely to be evaluated according to whether their impairment matches the medical criteria ("meets the listings"), which are themselves different from the criteria in 1970.

It has been alleged that the agency, particularly in mental impairment cases, has focused too heavily on the severity of the medical condition without making an adequate evaluation of the beneficiary's ability to work, with the result that benefits have been terminated for many people who cannot function in a work environment. These policies seem to have been in effect well before the inauguration of the accelerated review in 1981, but the combination of an apparently more restrictive policy and reviews of large numbers of beneficiaries have resulted in widespread complaints about SSA's procedures.

These policies have come under severe criticism in Federal courts, particularly in the Ninth Circuit Court of Appeals which has ruled twice that SSA must demonstrate either medical improvement or (in the later ruling) clear and specific error in the original award, in order to terminate disability benefits. Similar "medical improvement" standards have been declared in other circuit courts as well, and an increasing number of State governors have declared those judgements to be binding on ALJ's and State adjudicators in opposition to Federal policy guidelines.

In summary, the re-examination of large numbers of current disability beneficiaries has resulted in termination of benefits for many beneficiaries whose medical condition has not changed substantially since they were allowed benefits. Medical impairments are being closely examined to determine whether they meet today's standards—if the impairment is now judged to be not severe, the person's benefits are terminated, whether or not the impairment is any different from when the person was first allowed. The primary issue therefore is whether a person's benefits should be terminated because standards of disability have changed since the individual was first allowed benefits, so that he is judged able to work under current criteria even though his medical condition has not improved.

The committee recognizes that the problems with the current review have arisen, at least in part, because the criteria for termination of benefits as a result of review were left unstated in the law. SSA has therefore had wide discretion to apply whatever standards it deemed appropriate—and since the standards of the current program apparently are stricter than those in the past, applying today's standards has meant eliminating benefits for many more beneficiaries than was anticipated when the 1980 Amendments were enacted.

Therefore, section 101 of the bill establishes a clear "medical improvement" standard that creates a category of beneficiaries who, because their medical conditions have not improved, are presumed to be unable to work and who therefore must continue to receive benefits. This standard contains several important exceptions which would allow termination of benefits even where the beneficiary's medical condition has not improved: where the beneficiary is performing substantial gainful activity, where medical or rehabilitation techniques allow the person to work despite his un-

changed condition, where the original decision was in error, or was fraudulent, or where new or improved diagnostic techniques or evaluations reveal that the impairment is less disabling than originally thought.

The committee believes these exceptions address several legitimate concerns: that benefits which were improperly allowed originally should not be continued; and that the documented effects of medical or vocational therapy on an individual's ability to perform SGA, and the result of a reassessment of the severity of an individual's impairment based on the application of new or improved diagnostic or evaluative techniques need to be taken fully into account in making continuing disability determinations. The committee emphasizes, however, that the application of these exceptions is contingent on the satisfaction of specified requirements relating to documentation, the acquisition of appropriate medical and vocational evidence and the use of specified techniques or procedures. Thus, with respect to the effect of medical or vocational therapy on an individual's ability to perform SGA, the exception would be applicable only if it is demonstrated, on the basis of new medical evidence and a new assessment of the individual's residual functional capacity (RFC), that the individual has been the recipient of services which reflect advances in medical therapy or technology (or the recipient of any vocational therapy) which has had the effect of restoring the individual's ability to engage in SGA.

Similarly rigorous requirements must be satisfied with respect to the use of the exception relating to the results obtained from the application of new or improved diagnostic or evaluative techniques which may disclose that the individual's impairment is less disabling than originally thought at the time of the prior determination (for example, the individual has the ability to do his previous work, that is, usual work or other past work). The committee recognizes that there may be some cases in which the prior decision that the individual was disabled was based, in part, on an assessment of residual functional capacity that was either improperly or inadequately documented. While it might be argued that in such cases a finding of clear error ought to be made, it is not intended that the standard of "clearly erroneous" be loosely applied to encompass inadequate development of a case. Moreover, the cases involved here do not represent "erroneous determinations"; rather, they reflect decisions properly made in accordance with the state of the art at the time the decisions were made and in accordance with the administrative procedures in place at that time. The fact is, however, that changing methodologies and advances in medical and vocational diagnostic and evaluative techniques have given rise to improved methods for documenting and evaluating medical evidence, RFC, and vocational factors. Where such methods, properly used, permit the development of more accurate, objective and valid results, they should not be ignored.

The committee intends that where SSA uses new or improved evaluation techniques to determine and document an individual's ability or inability to work, and where this new determination shows that an individual is not as disabled as initially considered (for example, the individual can do his previous work), such evidence may serve as the basis for a finding under this section that



the individual is not disabled within the meaning of Title II of the Social Security Act.

The committee expects that this exception will be carefully applied and that any determinations made in accordance with this provision will be fully documented, accurate and consistent with objective medical and vocational findings. Since these cases may involve individuals who have been receiving disability benefits in good faith, the committee re-emphasizes here that it expects the Secretary to re-evaluate the consideration given in the continuing disability process to factors such as age and duration in benefit status. Nonetheless, when appropriately and responsibly applied, this exception is available to assure the equitable attainment of the objectives of the program.

The committee is aware that in some cases adjudicated in prior years all the medical information relevant to the initial decision may not still be in the beneficiary's file and that such a situation would preclude the possibility of making an objective finding with respect to a change in the severity of the beneficiary's impairment. In such cases, SSA would be authorized to secure such medical information as may be necessary to fully reconstruct the medical records and data that were utilized in making the initial decision. The committee emphasizes, however, that the inability to reconstruct such records and data cannot serve, in and of itself, as a basis for a determination that there has been medical improvement. Such a conclusion may be reached only if the records applicable to the initial decision have been fully reconstructed and the prior and current medical evidence discloses that there has in fact been medical improvement.

### *3. Study concerning evaluation of pain (sec. 102 of the bill)*

The social security statute currently provides no guidance on the use of allegations of pain by the claimant in the disability determination process. Because the definition of disability states that inability to work must be "by reason of a medically determinable impairment", the Social Security Administration has allowed allegations of pain to be used only if a specific physical impairment exists to which the pain can be reasonably attributed.

However, many claimants allege disability primarily or substantially as a result of disabling pain that cannot be specifically attributed to a physical condition. Because the law itself is not explicit, allowance decisions at the ALJ and Federal court levels have not infrequently depended heavily on this kind of subjective evidence. Almost every circuit court of appeals has ruled at some point over the last ten years that eligibility should be based on subjective evidence of pain, at least in cases where it corroborated by testimony of other witnesses.

The committee is concerned that a fragmented standard is now in effect for using subjective evidence of pain, depending on whether the beneficiary has pursued his claim through the ALJ or district court level. While it may well be the case that pain in and of itself, regardless of its cause, can result in inability to work, there is apparently still no way to verify the existence of such pain through objective medical testing.

The committee is therefore reluctant at this time to allow determinations of disability to be based on such subjective criteria. There is plainly a critical need for a clear legislative policy, to be applied to all cases on a nationwide basis; it is not appropriate for the Federal courts to establish policy on such an issue simply because the statute is insufficiently specific. However, the committee cannot, at this time, mandate such a policy, simply because there is not enough information about the impact this kind of change would have on the types of cases that would be allowed and on the costs to the disability program.

Therefore, section 102 of the bill requires the Secretary in conjunction with the National Academy of Sciences, to conduct a study on the question of using subjective evidence of pain in determining disability, and on the question of the state of the art of preventing, reducing or coping with pain, and to report to the Congress by April 1, 1985 on the results of the study. It is anticipated that at that time, Congress will be able to develop a satisfactory statutory standard.

The committee also directs the Secretary to conduct such studies as are necessary to obtain complete information and statistics on both the fiscal costs and administrative feasibility of eliminating the 5-month waiting period for disability benefits for persons diagnosed by their physicians as terminally ill with less than 12 months to live. The results of such studies shall be presented to the Congress no later than October 1, 1984.

#### *4. Multiple impairments (sec. 103 of the bill)*

Under current law, the first step in the sequential evaluation process through which the disability determination is made is to determine whether the applicant has a severe impairment. If SSA determines that a claimant's impairment is not severe, the consideration of the claim ends at that point. In cases where a person has several impairments, none of which meet the standard for "severe", he is judged not disabled, without any further evaluation of the cumulative impact of his impairments on his ability to work.

The committee believes that this does not represent a realistic policy with respect to persons with several impairments which may in many cases interact and effectively eliminate the person's ability to work. While it is clear that the determination of disability must be based on the existence of a medically determinable impairment, there are plainly many cases where the total effect of a number of different conditions can safely be characterized as disabling, even if each by itself would not be. Section 103 of the bill therefore requires that in determining whether an individual's physical or mental impairment or impairments are so severe as to be disabling, SSA must consider the combined effect of all the individual's impairments without regard to whether any individual impairment considered separately would be considered severe.



## B. Disability determination process (secs. 201-205 of the bill)

### *1. Moratorium on mental impairment reviews (sec. 201 of the bill)*

Serious questions have been raised by Federal courts, professionals in the fields of psychiatry and vocational counseling and the General Accounting Office about the adequacy of SSA's Listing of Mental Impairments and the appropriateness of SSA's current methods for assessing residual functional capacity and predicting ability to work in individuals with mental impairments. While the validity of all these criticisms may be subject to some debate, it is clear that in many cases individuals have been improperly denied benefits. Moreover, the Secretary has determined that a full scale re-evaluation of the Listings and current procedures is necessary and, on her own motion, has imposed a moratorium on reviews of mental impairment cases classified as functional psychotic disorders. However, the moratorium imposed by the Secretary does not include all mental impairment cases that will be affected by changes in the listings and procedures, does not provide a precise timetable for the review and resolution of the pertinent issues and does not stipulate how the results of these changes are to be subsequently implemented.

The committee agrees that a moratorium of the kind imposed by the Secretary is warranted. However, the committee is concerned about the need to establish clear guidelines with respect to the review process, the timeframe for conducting the re-evaluation and procedures for the disposition of cases, including new applications and prior CDI's in the categories affected by the moratorium. The purpose of section 201 is to provide these guidelines.

Under section 201 a temporary delay would be imposed on reviews of all mental impairment cases until the Secretary revises the criteria embodied under the category "Mental Disorders" in the "Listing of Impairments." The revised listings and procedures for assessment of residual functional capacity are to be designed so as to realistically evaluate the ability of a mentally impaired individual to engage in substantial gainful activity in a competitive environment. Regulations establishing such reviewed criteria and listings are to be published no later than 9 months after the enactment. Moreover, the Secretary is required to conduct this re-evaluation and to prepare the appropriate regulations in consultation with the Advisory Council on Medical Aspects of Disability (created under section 304 of the bill).

This delay of reviews would apply to all CDIs of mental impairment cases upon which a timely appeal was pending on or after June 7, 1983 or on which no initial decision has been rendered as of the date of enactment, unless the individual is engaged in substantial gainful activity or fraud is involved.

Initial cases denied during the moratorium period are to be reviewed by the Secretary as soon as feasible after the new criteria are established, and those with mental impairments who were denied benefits or had their benefits terminated between March 1, 1981 and the date of enactment will have their cases reopened as of the most recent prior determination if they reapply within one

year. Benefits would be paid as of the date of reapplication but the individual's insured status would thus be protected.

The committee is cognizant of the fact that revision of the listings in the mental impairment area could potentially result in an increase in the cost of the disability program. For that reason, the committee intends to monitor closely the cost effects of these revisions and directs the Secretary to report to the Committee on Ways and Means and the Senate Committee on Finance on the cost effects of any proposed changes in the listings 30 days in advance of the implementation of the regulations.

## *2. Face-to-face hearings in State disability determination agencies (sec. 202 of the bill)*

Decisions as to whether or not an individual is disabled are made by 54 State disability agencies under agreements with SSA. These decisions may be appealed. Currently a disability claim or a CDI may go through five or more decision levels:

- (1) The initial decision by the State agency, which if adverse can be appealed to
- (2) the reconsideration level, also conducted by the State agency, which if adverse can be appealed to
- (3) the Federal administrative law judge hearing, followed by, if adverse,
- (4) an appeals council review; and finally
- (5) if all prior decisions are adverse, the claimant can file an appeal in the Federal court system.

Under present law, the Federal Administrative Law Judge (ALJ) is the first level at which the disabled individual meets face-to-face with a decisionmaker. Initial interviews are conducted in SSA district or branch offices (of which there are about 1300) when the individual first applies or is first called in for a CDI, but no decisions are rendered there.

Even though no decisions are rendered in the social security district office, the committee recognizes the importance of the initial interview a CDI beneficiary or new applicant receives there. The district office has traditionally played a major role in assuring a full explanation of the program, of the individual's rights, the procedures involved, and in providing assistance to the individual in pursuing his or her claim.

P.L. 97-455 mandated that by January 1, 1984, individuals whose benefits are terminated due to a medical review (CDI) must be given the opportunity to have a face-to-face evidentiary hearing at the reconsideration level conducted either by the Secretary or the State agency. Although it may be necessary for logistical reasons for the Secretary to implement this provision in many areas of the country through the use of SSA hearings officers, the committee would encourage the Secretary to offer State agencies the option to conduct these face-to-face hearings. Since, under the provisions of the committee's bills, this reconsideration hearing would be only a temporary transitional procedure which would be phased out as the State agencies implement a face-to-face interview at the initial State agency decision level, State agencies could acquire valuable experience in conducting the transitional reconsideration hearing.

There is virtually unanimous agreement about the desirability of providing for a face-to-face meeting between the disability beneficiary and the administrative decisionmaker. The committee believes that such a meeting at the initial stage in the adjudicative process would permit State agency disability examiners to better assess the individual's residual functional capacity and assure that all relevant medical and vocational information has been obtained. Moreover, an interview at the initial State agency level, rather than at some later stage, would both simplify and expedite the decision-making process.

Consequently, section 202 provides for the implementation, no later than January 1, 1985, of face-to-face evidentiary interviews by all State disability agencies at the initial decision level for all medical termination cases. Under this provision, the State agency would send the beneficiary a preliminary notice of an unfavorable decision and the claimant would have 30 days in which to request a face-to-face meeting before a formal determination is made. The present reconsideration level would be abolished upon implementation of the State interviews. The committee emphasizes that where it is possible it would prefer that this provision be implemented earlier than January 1, 1985, and that where this occurs the transitional reconsideration hearings would be terminated.

The committee also endorses the concept of instituting face-to-face hearings at the initial, State level, and of abolishing the reconsideration level, for initial claims as well as CDI review cases. However, it is recognized that this procedure would be a complicated and major change for the program necessitating further study and preparatory administrative planning. As a result, section 905 also requires the Secretary to initiate demonstration projects with respect to face-to-face evidentiary meetings at the initial level of State agency determinations for new applicants and requires the Secretary to report to the Congress by April 1, 1985, on these projects. These projects must be conducted in a minimum of five States with the participating States to be selected no later than January 1, 1984. Where the projects are initiated, the reconsideration level would be eliminated.

The committee emphasizes that, where feasible, these demonstration projects should be implemented prior to the dates in the bill and notes that some States have expressed a strong interest in testing out this procedure. Since the committee is concerned that there be a full and cooperative effort made to implement and carry out all phases of a face-to-face interview in initial cases, the committee believes it would be appropriate to use these particular States in the demonstration projects.

### *3. Payment of benefits during appeal (sec. 203 of the bill)*

P.L. 97-455, passed by Congress in December 1982, included a provision to allow beneficiaries whose benefits had been ceased because of a medical review of their eligibility to elect to continue receiving benefits until an ALJ has rendered a decision on the case. If the case is denied, then the benefits, except for Medicare, are subject to recoupment (subject to the hardship waiver standards already in law). This provision, however, was adopted on a temporary basis only—until further consideration could be given to the CDI



issue in the 98th Congress. Thus, under present law, no extended payment can be made after June 1984 and the provision applies only to cessations occurring before October 1, 1983. For cessations after that date the program will revert to prior law which provided benefits for the month of cessation and two additional months. Since January approximately 113,000 individuals have elected to continue benefit payments during appeal.

Section 203 provides on a permanent basis for the continuation of benefits during appeal in all CDI cases through the decision of the Administrative Law Judge. Where the ALJ's decision is adverse to the beneficiary, such benefit payments would be subject to recoupment as under present law. The Secretary also must report to the committee on Ways and Means and the Committee on Finance by July 1, 1986, on the impact of this provision on expenditures from the social security and Medicare trust funds and the rate of appeals to ALJs. The committee believes, based on the experience under the present temporary provision, that providing for continuation of payments during appeal helps considerably to ease the severe financial and emotional hardships that would otherwise be suffered by disabled persons.

In addition, it is recognized that beneficiaries may be reluctant to elect to receive continued benefit payments for fear of not being able to repay the benefits provided if the decision of the Administrative Law Judge is unfavorable. The committee intends that at the time beneficiaries are given the opportunity to make this election they be informed that, in the event of an unfavorable determination, they might be eligible for a waiver or for a long-term repayment plan. The committee further intends that the Secretary take into account individual circumstances in making a determination as to whether or not to waive the overpayment.

#### ***4. Qualifications of medical professionals (sec. 204 of the bill)***

A shortage of qualified medical personnel has been a chronic problem in the social security disability program. Knowledgeable medical consultation is necessary for accurate decisions, and particular concerns have been raised that in the area of mental impairments a general medical knowledge is often not sufficient for a full evaluation of an individual's claim. The committee notes that through the encouragement of the Social Security Administration almost all State agencies now have staff psychiatrists available.

Section 204 requires that where there is an unfavorable decision in a mental impairment case, a qualified psychiatrist or psychologist must complete the medical portion and the residual functional capacity assessment of the determination. The committee believes that this requirement will help assure an accurate determination of the individual's capacity for substantial gainful activity.

The committee would also encourage the Social Security Administration to urge States to secure qualified specialists in other areas of impairments and to examine methods (such as referrals to nearby States or to the SSA central office) for providing consultation with specialists where that would be helpful but is not locally available. The committee notes that requiring States to hire physicians in all specialties would be costly and in some States impossible. Nonetheless, the committee believes efforts should be made, to



the extent feasible, to provide disability examiners with the expert consultation of specialists wherever that would be helpful in making an accurate decision.

In this and other areas the committee notes that efforts to gather every piece of evidence must be balanced against the time and resources required to do so. If the disability judgment takes too long or becomes too fraught with complicated procedures for gathering evidence it would be criticized on those grounds. Indeed, some courts have interposed time limits on how long the agency can spend in reaching a decision. Given the already substantial administrative costs of the program and the constraints imposed by individual States on securing additional personnel, the availability of resources is also a real consideration since imposing requirements for which there are not adequate resources generally causes additional disruption of the program—the opposite effect from that intended.

Nevertheless, concerns have been expressed that in an effort to process cases in an expeditious manner, procedures have been followed by SSA which inhibit the full development of medical and other evidence and which made it more difficult for disabled claimants fully to state their case.

The committee emphasizes the need to examine all relevant evidence in making a disability determination and the need to actively seek and pay particular attention to evidence from treating physicians, especially in chronic illnesses. SSA and State agency personnel share an obligation to assist the claimant in understanding the process and securing necessary medical data. The committee, therefore, requests that the Secretary report to the Congress on the current use of home visits by agency personnel and on whether there are other instances where a home visit would not now occur but which might be constructive in providing the agency with full information on a claimant.

Similarly, the committee is concerned that hearings locations (and face-to-face interview locations) be accessible to beneficiaries. Such offices should be located in buildings fully accessible to the handicapped; funding for medical evidence and travel should be provided, and the Social Security Administration should re-examine the current requirement that a beneficiary must travel at least 75 miles in order to qualify for travel reimbursement as this standard may be inappropriate in many locations in this country.

#### *5. Regulatory standards for consultative examinations (sec. 205 of the bill)*

Consultative examinations are medical examinations purchased by the agency from physicians outside the agency to secure medical information necessary to make a determination or to check conflicting evidence. Many concerns have been raised about the improper or generally unsupervised use of CE's and SSA has taken several steps to tighten up procedures in this area and particularly to restrict the use of doctors providing CE's on a volume basis (volume providers).

The committee is pleased to note that efforts are being made to provide more direction in the use of consultative examinations and would encourage SSA to redouble its efforts to secure reasonable

fee structures for consultative examinations so that dependency on volume providers can be reduced. The committee also believes, however, that concerns about the use of consultative examinations would be lessened if policies now in effect with respect to consultative examinations (or any subsequent policies that may be developed in this area) were embodied in regulations. Section 205, therefore, requires that the Secretary promulgate such policies in regulations. Since the purpose of this provision is only to assure that the policies are published in regulations there is no intent or implication that any new claims or pending cases involving consultative examinations be delayed until the regulations are published. On the contrary, it is the committee's intent that such cases will continue to be processed and adjudicated as under present law.

The committee also notes that questions have been raised about SSA's application of the trial work provision of present law. In order to eliminate any possible misunderstanding or confusion about the intent of this provision, the committee reaffirms that recency of work and sustained work over several consecutive months is necessary for an individual to meet trial work conditions.

### C. Miscellaneous provisions (secs. 301-305 of the bill)

#### *1. Uniform standards for disability determinations (sec. 301 of the bill)*

Section 553 of the Administration Procedure Act of 1946 established basic requirements for informal rulemaking, the process by which most regulations today are promulgated. This section requires general notice of proposed rulemaking to be published in the *Federal Register*, and an opportunity for public comment during a period of at least thirty days prior to the effective date of the rule. There are general exceptions to these requirements for interpretative rules, statements of policy, and rules of agency procedure, organization or practice, and where the agency for good cause finds the notice and comment procedures impractical or contrary to the public interest.

Social security benefits are not covered under Section 553 by virtue of an exception in Section 553(a)(2): "a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts." This exception was part of the original APA, which was enacted at a time when there were very few Federal benefit programs: the social security disability and Medicare programs did not exist, and requirements for old age and survivor benefits were fairly explicit in the statute. In 1971 then-Secretary of HEW (now HHS) Elliot Richardson issued a statement placing all HEW programs voluntarily under the APA rule-making requirements.

However, SSA has continued to issue, as do other agencies such as the Internal Revenue Service, other policy statements, notably Social Security Rulings and the disability claims manuals (POMS), which are supposed to contain only clarification and interpretation of the policy contained in regulations. In addition, it has been alleged that real operating policy often develops as a result of State disability examiner reaction to return of specific allowance decisions deemed incorrect by SSA's Federal quality assurance review-

ers. None of these sources of policy are open to public notice or comment.

The Bellmon Report on the hearings and appeals process, mandated by the 1980 Disability Amendments, found wide discrepancies in standards applied by the administrative law judges who are bound by the statute and regulations, as opposed to those applied by the State agencies who are bound by the POMS. This discrepancy may be a major reason for the high reversal rate of State agency denials at the ALJ level (standing at around 55 percent currently). As a result of this report, and the even higher reversal rate for CDI cases, there has been considerable pressure for uniform criteria at all levels of adjudication. SSA's response to this pressure was to begin incorporating the POMS into Social Security Rulings, which by regulation (20CFR 422.8) are to be relied upon as precedents in cases where the facts are essentially similar by ALJ's as well as State agencies.

The original exception for social security to Section 553 notice and comment requirements appears to have been more an accident of history than deliberate Congressional intent concerning all social security programs. When the APA was enacted, the disability program did not yet exist, and there were as yet very few social security beneficiaries of any sort.

Elimination of the APA exception for benefits has been recommended by the American Bar Association, and such a change has been incorporated in H.R. 2327, currently under consideration by the Judiciary Committee (a similar provision was previously approved by the Senate). There appears to be widespread agreement concerning eliminating just the exemption in 553(a)(2) for public benefits. There appear to be considerably greater complications in any changes to section 553(b)(A) which allows interpretive statements to be issued without public notice and comments. The Judiciary bill provision for limiting the exemption in 553(b)(A) for interpretive rules has been the subject of extensive debate for some time, and the bill retains the good cause exception in 553(b)(B).

The committee believes that it is appropriate for changes in policies that affect whether or not people receive disability benefits to be published in regulations allowing for public participation in the process. The policy decisions that must be made concerning disability determinations are far more complex than most policies in the old age and survivor programs, for one major reason: the determination of ability to work is an inherently difficult eligibility decision, while eligibility for retirement benefits depends on factors of age, quarters of coverage, and current earnings that are relatively easily determined.

However, the agency should also have sufficient flexibility to respond to changes in conditions quickly, and to issue administrative guidance to State agencies on a timely basis. There is clearly an appropriate role for issuance of informal policy clarification through rulings or other informal vehicles, and the committee has no wish to deprive the Social Security Administration of this ability.

Therefore, section 301 of the bill requires that the notice and comment provisions concerning issuance of regulations of section 553(a)(2) of the Administrative Procedures Act be applied to benefit



programs under Title II. The provision does not affect the application of the exception in section 553 allowing informal policy clarifications to be issued through non-regulatory statements.

The committee emphasizes that the intent of the provision is to provide uniform standards for decision-making at all levels of the disability determination process, through the normal channels of rule-making that allow some degree of public participation in the process. In order to allow SSA some degree of flexibility in administering the extremely complex disability program, the bill allows the current practice of issuing Social Security Rulings to continue. However, it cannot be too strongly emphasized that the intent of the provision in eliminating the first exception is that all policy that substantially affects the determination of eligibility must be the same for all levels—State agency through administrative law judge—and must be issued through regulations.

This provision does not address directly the problem of informal policy direction given to State agencies through the quality assurance process. It may be difficult to prevent returns of cases to the State agency from having an effect on overall adjudicative policy, particularly as the agency begins to review sixty-five percent of all favorable decisions. However, the committee intends Section 301 of this bill to produce uniform policy at all levels arrived at through processes open to public scrutiny. It is therefore expected that the Social Security Administration will take all steps necessary to limit the influence of quality assurance systems on day to day operations and policy of State agencies.

The committee is also aware of the grey area that exists between issues clearly having substantial policy impact that plainly belong in regulations, and issues clearly minor, administrative or merely clarifying that plainly belong in informal policy statements. It will be necessary, therefore, for the committee to closely monitor SSA's activities with respect to this provision to assure that misunderstandings do not arise and that the desired ends are achieved. All administrative law relies heavily on the presumption that agencies will perform their duties in good faith, and the committee is, to a certain degree, relying on the expectation of good faith efforts by the agency to promulgate uniform standards through the regulatory process. If after some period of experience, it is found that this section has not had the desired effect of producing uniform standards, further measures will be considered.

## ***2. SSA compliance with certain Federal court decisions (sec. 302 of the bill)***

Under the Federal judicial system, decisions by a circuit Court of Appeals are considered the "law of the circuit," and constitute binding case law to be followed by all district courts in that circuit. In general, if two circuits rule differently on a particular issue, the Supreme Court will review the issue to settle the dispute. The application of Supreme Court decisions to executive branch policies is virtually undisputed: if a particular policy is found unconstitutional, or contrary to the statute, that decision is binding on the agency. The appropriate application of circuit and district court decisions to agency policies is not as clear-cut.



Claimants for benefits under the Social Security Act may appeal State agency denials through several layers of administrative appeal, up through the appeals council. A claimant who wishes to continue to pursue appeal may next turn to the Federal district court with jurisdiction over his or her claim. The district court reviews the record as compiled by the agency to determine whether substantial evidence existed for the agency's decision. The district court's review is not a trial de novo, but rather is limited to a consideration of the pleadings and the transcript of the proceedings at the ALJ hearing. If the district court finds substantial evidence existed to support the agency's decision to deny benefits, a claimant may appeal the decision to the circuit court with jurisdiction, and ultimately petition the Supreme Court for certiorari.

Appeals of the agency's determinations to the Federal district courts are occurring with much greater frequency in recent years, imposing a workload burden on some district courts. Between 1955 and 1970, the total number of disability appeals filed with the Federal district courts was about 10,000 cases. In 1982 alone, nearly 13,000 disability cases were appealed to the district courts. The large increase in Federal court litigation on social security matters may be partly responsible for the present tension between SSA and the lower Federal courts.

Most disability cases decided in the Federal courts have little value as precedent for SSA decisions, since most reversals of agency determinations rest on the lack of substantial evidence for the agency's position. However, in many instances the court's opinion sets forth a statutory interpretation contrary to that of the agency, in the traditional manner in which Federal courts establish a rule of law, which is intended to be binding on the agency in later cases concerning the same issue. Circuit courts of appeals decisions in such cases have been issued with increasing frequency in recent years, with the clear expectation of the court that SSA would abide by its interpretation as would normally be the case with rulings having precedent as law within the circuit.

The Social Security Administration does not follow U.S. Courts of appeals decisions with which it disagrees, either nationwide or within the circuit of the ruling. While the agency does obey the court's ruling in the particular case being adjudicated, the interpretation of law from the court is not considered binding by the agency either for State disability agency operations or for Federal social security offices.

Moreover, the agency frequently does not appeal district court or circuit court opinions with which it disagrees. This practice ensures that the Supreme Court will not have the opportunity to review the issue and render a decision with which the agency would be compelled to comply. Social security ALJ's are not able to follow court of appeals decisions as precedent if the Supreme Court does not make a ruling or if the agency does not incorporate the circuit court's decision in social security rulings or regulations, which is most often the case in decisions SSA disagrees with.

SSA has been criticized for this policy, both by outside experts and Federal judges, on the grounds that it undermines the structure of Federal law, and in essence allows SSA to overrule the legal judgment of the Federal courts by administrative inaction.

SSA defends its policy on the grounds that a Federal benefits program should be administered uniformly on a national basis. It should be noted that in a brief before the Supreme Court in *Califano v. Yamasaki* (1979) the brief for petitioner Secretary Califano stated the following:

When a statutory or constitutional issue is decided adversely to the Secretary in the course of judicial review obtained by an individual claimant, the Secretary will either appeal or abide by the unfavorable ruling. Repetitious litigation will thus not be necessary in order to establish a general legal principle applicable beyond the confines of a particular case. *Stare decisis* will impel the Secretary to follow statutory or constitutional decisions within the jurisdiction of the courts having rendered them.

This statement is in marked contrast to the repeated instances brought to the committee's attention of SSA's non-acquiescence policy, summed up in the following statement from the Associate Commissioner for Hearings and Appeals issued to Social Security ALJ's in January, 1982:

The Federal courts do not run SSA's programs, and [SSA's adjudicators] are responsible for applying the Secretary's policies and guidelines regardless of court decisions below the level of the Supreme Court. (Social Security memorandum to its Administrative Law Judges)

Since 1978, there have arisen numerous cases in which circuit courts of appeals have ruled on issues where the Title II or XVI statute is unspecific or silent, most notably the issues of use of allegations of pain in disability determinations, and of whether a beneficiary whose condition has not medically improved can be found not disabled. Every circuit court of appeals in the country with the exception of the D.C. circuit has ruled that subjective evidence of pain must be allowed in finding claimants eligible for benefits. Several circuits, including the Ninth Circuit in two separate opinions, have ruled that SSA must show that a beneficiary has medically improved before ruling him no longer disabled. In all of these cases, SSA has not applied the court interpretation of the statute beyond the litigated case, and has not pursued an appeal to the Supreme Court.

The committee is concerned about the result of this non-acquiescence policy for claimants, the courts and SSA. First, while it is clearly of utmost importance that a Federal program be administered according to uniform, Federal standards, it is not clear that SSA's non-acquiescence policy substantially achieves that end. In fact, under the current policy, distinctions exist *within* circuits between policies applied to those claimants who pursue their claims to the appeals court level, and those who cannot. Such a difference will be particularly significant in those circuits where a class action suit applying to several thousand claimants is successful.

The committee is most concerned about the impact of this policy on beneficiaries and claimants, and on their relationship to the social security program. If a circuit court rules on a given issue such as medical improvement, it is a foregone conclusion that sub-



sequent appeals to that court on that issue will be successful. By refusing to apply the circuit court ruling, SSA forces beneficiaries and applicants to re-litigate the same issue over and over again in the circuit, even though the agency is certain to lose each case.

The committee can find no reason grounded in sensible public policy to force beneficiaries to sue in order to obtain what has been declared by the Federal court as justice in a particular area. Such a policy creates a wholly undesirable distinction between those beneficiaries with the resources and fortitude to pursue their claims, and those who accept the government's original denial in good faith or because they lack the means to appeal their case. The strength of the social security program has always rested on the public perception that the agency's mission is to provide benefits to all those entitled to them, without undue delay or bureaucratic barriers. The increasingly adversarial character of the process for becoming eligible for disability benefits, and especially for retaining eligibility, does immeasurable harm to the public's trust in the social security program and in government as a whole.

The committee is also concerned about the increasing number and intensity of confrontations between the agency and the courts as SSA refuses to apply circuit court opinions. The Ninth Circuit court recently characterized the Secretary's defense of her non-acquiescence policy as "far from persuasive." The opinion goes on to state:

. . . other circuits that have considered the question have already rejected the Secretary's argument that a Federal agency can legitimately ignore Federal appeals court precedents. See, e.g., *Jones & Laughlin Steel Corp. v. Marshall*, 636 F.2d 32, 33 (3d Cir. 1980); *ITT World Communications v. FCC*, 635 F.2d 32, 43 (2d Cir. 1980); *Ithaca College v. NLRB*, 623 F.2d 224, 228-29 (2d Cir.), cert. denied, 449 U.S. 975 (1980); *Mary Thompson Hospital, Inc. v. NLRB*, 621 F.2d 858, 864 (7th Cir. 1980); *Allegheny General Hospital v. NLRB*, 608 F.2d 965, 970 (3d Cir. 1979). Moreover, the cases cited by the Secretary to support her position appear to be inapposite. In short, our review of the relevant case law indicates that there is little chance that the Secretary will succeed in her argument that non-acquiescence is a legitimate policy, or, to put it more precisely, that she will persuade us that there is a strong probability that the plaintiffs would ultimately prevail on this fundamental issue.

While the issue of the constitutionality of the non-acquiescence policy may be in doubt, the undesirable consequences of escalating hostility between the Federal courts and the agency are clear. The committee sees no compelling reason why the Social Security Administration's interpretation of the statute, particularly in issues where the definitions are not specific or are completely silent on the issue, should be automatically considered superior to that of the Federal court.

SSA's reasons for the current policy appear to be based largely on the desire for consistent national administration of the program. It is also clear that Federal courts may frequently hand

down decisions expanding agency policies in directions the agency and Congress may not wish applied on a national or regional basis. Since the guiding principle for Federal courts is the Constitution and the law, policy considerations such as cost constraints may play less of a role than they appropriately do in Congressional deliberations.

In such instances, however, the committee strongly believes that Congress' judgment as to the appropriate policy should prevail. If the Federal circuit courts hand down decisions that appear detrimental to the purposes or operation of the program, either the Supreme Court should be given the opportunity to make a determination that remedies the situation, or Congress may well have to clarify the law. In such cases, Congress might reasonably expect the agency to propose appropriate remedial legislation. Short of legislative changes, however, the committee sees no reason to allow SSA to ignore the law as determined in each circuit by the highest Federal court simply because the administrators view the Federal court's decision as mistaken.

Therefore, Section 302 of the bill requires the Social Security Administration to either apply the decisions of circuit courts of appeal to at least all beneficiaries residing within States within the circuit, or appeal the decision to the Supreme Court. This provision applies to circuit court opinions issued after the date of enactment as well as to those opinions which the Secretary still has the opportunity to appeal to the Supreme Court as of the date of enactment.

### ***3. Payment from trust funds for costs of rehabilitation services (sec. 303 of the bill)***

Prior to P.L. 97-35 (1981 Reconciliation Act), up to 1.5% of the total amount of disability benefits could be transferred from the trust funds for payment of vocational rehabilitation services for SSDI beneficiaries. In FY 1980 the amount transferred was \$110 million (the amounts transferred generally were well below the 1.5% ceiling). An additional \$50 million in general revenue funds were expended for SSI disability recipients. A benefit cost study completed by the Social Security Administration found that in 1975 between \$1.39 and \$2.72 savings accrued to the social security trust fund for every \$1.00 spent in this program.

P.L. 96-265 (the 1980 Disability Amendments) included a provision that DI and SSI benefits could continue even after medical recovery until the individual completed a vocational rehabilitation program in which he was participating provided he had not been expected to recover when he entered the program and provided the program would increase the possibility of the individual permanently leaving the rolls.

P.L. 97-35 abolished the general DI trust fund program and further provided the State VR agencies could be reimbursed only for the costs of services to beneficiaries that result in the beneficiary's performance of SGA (substantial gainful activity) for a continuous period of at least 9 months. Trust fund expenditures for FY 1982 were about \$2 million and have remained under \$10 million each year since.

Section 303 provides assurance to vocational rehabilitation service providers that they will be reimbursed for services rendered to



participants in the medical recovery program (Sec. 301 of P.L. 96-265) be removing the restriction added by P.L. 97-35 that reimbursement could occur only where the beneficiary had performed nine months of SGA and by adding a provision that reimbursement will occur where the beneficiary without good cause refuses to accept or fails to cooperate with services in such a way as to preclude successful rehabilitation.

The committee is concerned that provision of vocational rehabilitation services to social security beneficiaries be improved. Therefore, it directs the Advisory Council on Medical Aspects of Disability to examine the whole area of the availability of vocational rehabilitation services for social security disability beneficiaries with particular attention to the following issues: How to assure that beneficiaries are referred for services in the most expeditious manner; whether the Secretary should contract directly with public and private non-profit providers of services, including rehabilitation facilities; how to provide adequate incentives for State and non-profit organizations to participate in programs available to social security beneficiaries; and what types of services should be provided to people whose SSDI benefits are terminated as a result of a continuing disability investigation and how best to provide such services.

The committee also reaffirms the congressional intent that payment for eligible vocational rehabilitation services, based on reasonable estimates, be made to service providers in advance.

#### ***4. Advisory Council on Medical Aspects of Disability (sec. 304 of the bill)***

At a time when several major aspects of the social security disability program are to be re-evaluated and potentially revised in the light of advances in medical and vocational diagnostic and therapeutic techniques, the committee believes it is desirable to assure that the Secretary has ready access to the advice and recommendations of medical and vocational professionals. Thus, the bill creates a temporary Advisory Council (which would expire on December 31, 1985) consisting of medical, psychological and vocational experts to provide the necessary advice and recommendations to the Secretary on disability standards, policies and procedures. To assure the input of appropriate professional and consumer organizations, the Council would be authorized to periodically convene a larger representative group and to set up temporary short-term task forces to examine particular specialized issues. Under the bill, the Council's recommendations to the Secretary would be communicated to the Congress in SSA's currently required annual report to the Congress on the status of the disability program.

Of most immediate concern to the committee is the participation of the council in the required review of the mental impairment listings. The bill provides that the Council must be appointed within 60 days after enactment to assure the timely participation of the Council in this review.

The committee believes that the Council can also productively contribute to the re-examination of a number of other critical issues in the program. Section 304, for example, specifically directs the Council to examine and provide recommendations with respect

to the question of requiring the involvement of appropriate medical specialists services; i.e., how best to assure their availability and effective delivery to disabled persons. Moreover, it is expected that the Council will participate in the assessment of possible policy changes affecting medical aspects of the program, particularly any changes that might be considered with respect to the evaluation of pain. Because the Advisory Council will be considering issues concerning the delivery of vocational rehabilitation services, work evaluation and appropriate procedures and criteria for such services and activities, it is expected that among those chosen to be included on the council will be those with expertise in administering State and private non-profit vocational rehabilitation programs.

***5. Qualifying experience for appointment of certain staff attorneys to administrative law judge positions (sec. 305 of the bill)***

To qualify for an ALJ appointment, one must be an attorney with at least seven years of experience participating in formal cases at regulatory agencies, or in the preparation and trial of cases in courts of record, or in certain other legal work described in announcement. At least two of those years must be in the field of administrative law or in certain activities regarding hearings or the trial of court cases. At least one year of qualifying experience must have been at the GS-14 level in the Federal service, or at a comparable level of difficulty and responsibility in other employment. The highest grade available for staff attorneys who assist social security ALJs is the GS-12 level. Social security ALJ appointments carry a lifetime tenure at a GS-15 level.

The committee shares the concerns repeatedly expressed by OPM and SSA about the difficulty of finding qualified candidates for social security ALJ positions. Staff attorneys who work with social security ALJs are readily familiar with the social security program and with adequate training represent a potential pool of candidates for ALJ positions.

Section 305 requires the Secretary to establish a sufficient number of attorney advisor positions at GS-13 or GS-14 levels to ensure adequate career advancement opportunity for attorneys employed by SSA, and to assign duties and responsibilities to enable individuals in these positions to achieve qualifying experience for an ALJ appointment. The committee notes that the Committee on Post Office and Civil Service has expressed support for this amendment.

**D. SSI provisions**

***1. Extension of the section 1619 program for the SSI disabled who perform substantial gainful activity despite severe medical impairment (sec. 306 of the bill)***

Section 306 extends for two and one-half years, through June 30, 1986, the temporary authority contained in section 1619 of the Social Security Act that provides for the continuation of SSI benefits and/or Medicaid for disabled recipients who are able to work despite the continuation of their impairments.



Section 306 also requires the dissemination of information about the section 1619 program to the disabled and staff of various agencies and organizations.

Prior to mid 1985, HHS would compile information on the characteristics of section 1619 recipients including health services usage, impairments, and other information intended to be used in making recommendations regarding the continuation and/or needed modification in section 1619.

Section 1619 was enacted as part of the Disability Amendments of 1980 and was intended to lessen the work disincentives for SSI disabled recipients who, under prior law, risked the loss of SSI and Medicaid when they increase their work effort and earnings in spite of the continuation of their disability.

Section 1619(a) of the SSI law provides that an individual who loses eligibility for SSI because he or she works and demonstrates the ability to perform SGA, but who continues to have a disabling impairment, may become eligible for special SSI benefits until their countable income reaches the SSI income disregard "break-even point". People who receive the special SSI benefits continue to be eligible for Medicaid on the same basis as regular SSI recipients.

Under section 1619(b), an individual can continue to be eligible for Medicaid even if their earnings have taken them past the SSI income disregard "breakeven point." This special eligibility status, under which the individual is considered a blind or disabled individual receiving SSI benefits for purposes of Medicaid eligibility, applies as long as the individual: (1) continues to be blind or have a disabling impairment; (2) except for earnings, continues to meet all the other requirements for SSI eligibility; (3) would be seriously inhibited from continuing to work by the termination of eligibility for Medicaid services; and (4) has earnings that are not sufficient to provide a reasonable equivalent of the benefits (SSI, State supplementary payments, and Medicaid) which would be available if he or she did not have those earnings.

Section 1619 was enacted to be effective for three years with the expectation that information would be gathered regarding the characteristics of those who benefit from section 1619 and the impact of such a program on reducing the work disincentives for the disabled under the SSI disability program. The most recent information available to the Committee from the Social Security Administration shows that in December 1982, 287 SSI recipients were receiving benefits under the provisions of Section 1619(a) and 5,600 former SSI recipients were retaining eligibility for Medicaid under section 1619(b). Approximately one-half of section 1619 recipients are under age 30 compared to only 16 percent of all SSI disabled adult recipients.

The Administration has agreed to an extension of section 1619 with the understanding that more complete data will be collected and available by mid 1985 for further evaluation of the program. The Administration has agreed to collect data regarding the characteristics of the individuals benefiting from these provisions, the effects on work effort, and, in the case of continued Medicaid coverage, the types of health care services utilized and their costs. Some of the specific areas that should be studied are: the types of impairments of the affected individuals; the types of income available to

these individuals—earned and unearned; the movement of individuals from one eligibility status to another; the kinds of health services used and the offsets to costs due to employer-related health insurance and other third-party resources. It is recognized that the collection and analysis of these data require the participation and cooperation of the Social Security administration for matters involving eligibility, characteristics, and work incentives; the Health Care Financing Administration for matters relating to Medicaid costs and utilization; and the State agencies administering the Medicaid programs for providing Medicaid data in their files; and the Committee expects such cooperation.

This provision to continue the section 1619 program, also directs the Secretary of Health and Human Services and the Secretary of the Department of Education to develop and disseminate information and establish training programs for staff personnel, with respect to the potential availability of benefits and services for disabled individuals under the provisions of section 1619. At Committee hearings held in California and Washington, D.C. and from reports from the disabled and rehabilitation and social services agencies, the Committee found a lack of awareness or knowledge of the section 1619 program.

As stated in testimony at the hearings, "Getting information out to the disabled community is no simple task. It requires the best effort of the Social Security Administration and the cooperative efforts of disability organizations, rehabilitation agencies, and other groups concerned with disability." However, as was also stated in hearings by a disabled individual, who did not utilize the option available under section 1619 because the District office staff of the Social Security Administration did not inform her about section 1619. "In order for SSI recipients like me to use these work incentive options, we need to be aware of how they can help us attain our employment goals without jeopardizing our health and well-being."

The provision provides that the Social Security Administration would be responsible for training programs for their staff in the District offices. The Social Security Administration would also be responsible for making a concerted effort to inform SSI disability applicants and recipients about the provisions of Section 1619. The amendment also mandates that the Department of Education, intended to be carried out primarily through the Rehabilitation Services Administration, to also be involved in getting information out to the State Vocational Rehabilitation agencies. In addition, working with and through such agencies, the information is also to be made available to the other public and private rehabilitation and social service agencies in the States and to the various organizations of and representing the disabled.

The section 1619 program is intended to be a tool which can be used by those agencies and organizations responsible for enabling the disabled to improve their capabilities to increase their level of self support, to live independently or to work in a sheltered environment. Therefore, the Committee is concerned that unless there is a greatly increased effort to get information out to a broad range of individuals and organizations that many disabled individuals will not be made aware of this attempt by Congress to eliminate



the work disincentives for those disabled who are able to work in spite of their impairment.

In a related matter, the Committee is concerned that the Administration is counting toward the "trial work period" any month in which the disabled is earning over \$75 a month in a sheltered workshop. The Committee feels that the trial work period is to be used to, in effect, test the individuals ability to be eventually employed in a sheltered work shop should not be counted toward the "trial work period" months.

At the hearing held by the Subcommittee on Public Assistance and Unemployment Compensation regarding the extension of the section 1619 program, the following case examples were presented as to the impact of the section 1619 program:

In order for this committee to realize the impact of section 1619, a description of two cases should provide you with information that will, hopefully, assist in your decision. The first is a 26 year old woman who is a quadriplegic and requires an attendant to assist with her personal care and home care needs such as bathing, dressing, grooming, cooking, shopping and other needs. Vocational rehabilitation helped her complete a college program, providing funds for training and for attendant care. After graduating from college, she obtained full time employment as a computer operator with earnings of \$650 a month. Although she briefly received attendant care under a State medical program, she eventually was told she must either quit working or lose her eligibility. Since she was unable to pay this herself, she decided to quit working.

The second case is a personal friend on SSI who has overcome great barriers with his disability. He is a quadriplegic who has no use of his legs, right arm and limited mobility with his left arm. He obtained his Bachelor's degree in 1975 with assistance from the Vocational Rehabilitation Program. He then moved to Minnesota to continue with graduate school. Since no Medicaid Title 19 was available to assist with Attendant Care costs, he was forced into institutional care. In 1978, he was able to move out into the community of Minnesota due to the Attendant Care Program funded through the Federal and State Governments.

While finishing his education, he began full time work for a Rehabilitation Center, but after the nine month Trial Work Period, he would lose SSI status and, therefore, eligibility for Medicaid Title XIX and Social Services Title XX which paid for his Attendant Care. Ultimately, he had to quit an excellent position at the conclusion of his Trial Work Period or be forced to return to a life of dependency and institutional care. The cost of such care far exceeds the cost of continuing to live independently in the community with partial benefits.

Passage of the 1980 Social Security Disability Amendment, which included the provisions in Section 1619, changed the picture dramatically for these two individuals.

In 1981, my friend was able to obtain employment at another Rehabilitation Center in Minneapolis. He has retained Medicaid Title XIX and Social Services Title XX, and receives some SSI payments which make it possible to pay the additional expenses of living independently.

Today, he holds a new position with a private non-profit consulting firm that provides technical assistance on disability awareness to corporations and businesses in the private sector. The firm sponsors seminars that show supervisors and management how to work and communicate with disabled employees, thus, creating increased employment opportunities for persons with disabilities.

If SSI Special Benefits Amendment (Section 1619) is not continued, he will again be forced to quit his job in order to avoid institutional care, since he cannot afford the cost of attendant services without public assistance while engaged in employment.

## *2. SSI disability program work evaluation and rehabilitation study*

Section 307 would require the Advisory Council on the Medical Aspects of Disability to also study the following issues related to the SSI Disability program:

Consideration of alternative approaches to the use of work evaluation related to determination of eligibility for SSI disability benefit including: criteria for referral to work evaluation; relationship to rehabilitation potential and training; and appropriateness of providing stipends during extended work evaluation; and

Reexamining the definition of a successful rehabilitation of an SSI disabled recipient to include the ability of the severely disabled to work in a sheltered environment and live independently.

Work evaluation for purpose of the study would include determining an individual's: work activity capabilities; work activity limitations; rehabilitation potential; ability of the mentally impaired to cope with a competitive work environment; and needed modifications in the work setting to enable the individual to work.

Section 307 of the bill would require the Advisory Council on the Medical Aspects of Disability to consider alternative approaches to the use of work evaluation related to the SSI disability program. Such consideration by the Council should include examining proposals presented to the Committee on Ways and Means by various individuals and organizations with expertise in the area of work evaluation and rehabilitation.

The SSI program for the disabled grew out of the formerly State administered program for the disabled and was not an offshoot of the Social Security Disability Insurance program. Under the pre-SSI program the definition of disability was set by each State under some rather general Federal statutory and regulatory language.

While there is a common definition for disability for the Disability Insurance program and the SSI program, there are a number of very significant differences between the two programs and the

characteristics of the recipients of disability insurance and SSI disability recipients. These differences are critical when evaluating an individual's potential for employment and when determining the approach which should be taken both in determining eligibility for disability benefits and the approach to rehabilitation activities for such recipients. In addition, it needs to be recognized that Congress has defined a unique function for the SSI disability under the section 1619 program by providing ongoing income support and medical services under Medicaid for those disabled who have disabling impairments but who wish to have some level of employment in spite of their impairment.

The following chart compares some selected characteristics of the two programs and of the recipients of benefits under the two programs.

COMPARISON OF SELECTED CHARACTERISTICS OF THE SSI DISABILITY PROGRAM AND THE SOCIAL SECURITY DISABILITY PROGRAM AND A COMPARISON OF SELECTED CHARACTERISTICS OF RECIPIENTS OF DISABILITY AND SSI DISABILITY BENEFITS

Social Security Disability Insurance	SSI Disability Program
A. NON-DISABILITY BASIS FOR ELIGIBILITY	
A. Disability Insurance provides benefits for workers who are "insured for disability" and their dependents.	A. Eligibility for and the amount of SSI benefits for a disabled or blind individual is not related to whether the individual has earned social security coverage or to the level of an individual's previous earnings. Cash assistance for the disabled and blind under SSI is provided only to those who, in addition to meeting the disability criteria, have income and resources low enough to meet the eligibility standards. While approximately 34 percent of the disabled receiving SSI disability benefits also receive DI benefits, only one-third of those or 12 percent are DI recipients on the basis of their own work history.
B. IMPACT OF EARNINGS BY RECIPIENTS ON AMOUNTS OF BENEFITS	
B. Earnings by DI recipients below the SGA earnings test level does not reduce the amount of DI benefits paid to the recipient.	B. SSI recipients have a \$1 reduction in SSI benefits for every \$2 in earnings in excess of \$65 a month (\$85 a month if no other income).
C. MAJOR DISABLING DIAGNOSIS	
C. Approximately 12 percent of the DI recipients are eligible on the basis of mental impairments; circulatory disorders account for 29 percent of the disabling impairment; and skeletal-muscular impairments account for 19 percent.	C. Approximately 40 percent of the SSI disabled are eligible on the basis of mental impairments. Approximately 20 percent are on the basis of circulatory disorders.



COMPARISON OF SELECTED CHARACTERISTICS OF THE SSI DISABILITY PROGRAM AND THE SOCIAL SECURITY DISABILITY PROGRAM AND A COMPARISON OF SELECTED CHARACTERISTICS OF RECIPIENTS OF DISABILITY AND SSI DISABILITY BENEFITS—CONTINUED

Social Security Disability Insurance	SSI Disability Program
D. AGE OF RECIPIENTS	
D. 7. percent are under age 30 and 66 percent of the DI population in ages 50 through 64 years of age.	D. 24 percent are under age 30 of the SSI disabled population ages 18-64 and 66 percent are ages 50-64 of the SSI disabled population ages 18-64.
E. SEX OF RECIPIENTS	
E. 70 percent male and 30 percent female.	E. 40 percent male and 60 percent female.

At the August 3rd hearing of the Subcommittee on Public Assistance and Unemployment Compensation, testimony was presented on behalf of the State of Michigan's Interagency Task Force on Disability by the Director of the Michigan Department of Mental Health. The Michigan Task Force, which consists of professional staff from the State Disability Determination Service, the State vocational rehabilitation service agency, the State department of Mental Health, Department of Social Services and other state agencies made recommendations based on a broad view of the role of Federal and state government's responsibilities as related to the disabled. In describing the proposed Michigan model, as to the recommended use to be made of work evaluation, the Task Force representative contended that long term cost savings will accrue to the Federal government and to States through the use of work evaluations and vocational rehabilitation in selected cases.

The testimony stated that:

The relationship between multiple impairments and work ability or the relationship between residual capacity and work ability should be reliably documented. This documentation should involve the application of accepted techniques by a trained counselor who can become personally familiar with the claimant. This vocational documentation should become a part of the objective information which is reviewed in deciding whether disability benefits should be awarded. In this way, and only in this way, can ALJ's and disability examiners render uniform, reliable decisions based on objective assessments of a whole person—including equally-weighted medical and functional documentation

In directing the Advisory council to consider alternative approaches to work evaluation, section 307 defines work evaluation as follows:

For purposes of this section, "work evaluation" includes (with respect to any individual) a determination of (a) such individual's (b) the work activities or types of work activity for which such individual's skills are insufficient or inadequate, (c) the work activities or types of work activity for which such individual might potentially be trained or rehabilitated, (d) the length of time for which such individual is capable of sustaining work (including, in the case of the mentally impaired, the ability to cope with the stress of competitive work), and (e) any modifications which may be necessary, in work activities for which such individual might be trained or rehabilitated, in order to enable him or her to perform such activities.

The reason that such an approach is recommended, especially as related to the SSI program, is that most SSI applicants have had a very tenuous or non-existent connection to the work force. Therefore, if work evaluation is used only to determine eligibility for income assistance, the result could be to deny the individual the opportunity to gain access to those rehabilitation services which can enable an individual to lessen his or her dependency. On the other hand, if work evaluation is not used to accurately gauge, to the extent possible, the individual's limitations on being able to work at a substantially gainful wage level then the individual may be denied that financial assistance to which he or she is entitled and which is reflective of his or her very limited capacity to be self-sufficient.

This approach to work evaluation is illustrated in the following excerpt from the State of Michigan testimony:

In the model, I propose all individuals who pass through the screening criteria would be determined "presumptively disabled" and would be granted SSI benefits for up to six months, during which time additional vocational information would be acquired. These presumptive beneficiaries would be referred to state Vocational Rehabilitation agencies for a work evaluation to determine their potential for either gainful employment or for the development of skills needed for successful sheltered employment.

Results for work evaluations would be transmitted to examiners within the State DDS to be used in their final determinations of disability. If, based on comprehensive work evaluations, the claimant is found capable of SGA, the DDS would deny the individual as non-disabled. If the person is found to have no potential for SGA, and it is determined that further efforts at rehabilitation would not be effective (due to impairment), the case would be approved for SSI and SSDI benefits. In such cases, involvement in a sheltered workshop on an ongoing basis might be appropriate, with benefit levels reduced by the amount of sheltered workshop income. Finally, if the person is found to be potentially employable, SSI benefits would be granted during the person's progression (through rehabilitation) to more independent work settings. This latter possibility, involving training and rehabilitation, would vary

in length depending on individual competencies. At all points in a work rehabilitation plan, disability benefits would be reduced by the amount of income earned, case management responsibility would be vested in the rehabilitation agency (with DDS diarying claimant progress).

The amendment suggests the evaluation of the concept of "stipends" to be provided to those in the work evaluation process. The purpose here is to recognize that those individuals with such borderline ability to be self supporting must have a subsistence level of income while in an extended work evaluation.

Section 307 also requires the Advisory Council to examine the criteria for assessing whether a recipient of SSI disability benefits will benefit from rehabilitation services. Specifically, the amendment provides that such an examination will consider whether such criteria should include not only whether an individual will be able to engage in substantial gainful activity but also whether such services can be expected to improve the individual's functioning so that he or she will be able to live independently or work in a sheltered environment.

Unlike the Disability Insurance program, earned income below the Substantial Gainful Activity earnings test of \$300 a month received by SSI disability recipients does result in a savings to the SSI program. SSI benefits are reduced \$1 for every \$2 of earnings after the initial disregard of the first \$85 a month for individuals with no other income. Therefore, rehabilitation services and training will have a savings to the SSI program even if the earnings of an SSI disability recipient does not reach the SGA earnings test of \$300 a month.

In addition, at the income level provided under the SSI program even an additional small increment of income from sheltered employment can make a significant difference between marginal subsistence and some degree of independence, improved quality of life, and self-esteem which such earnings can provide.

### ***3. SSI conforming amendments***

Included in the bill as reported by the Committee are provisions to make generally the same changes in the SSI statute (Title XVI of the Social Security Act) as are made in the Disability Insurance program under Title II of the Social Security Act. The provisions also ensure applicability to the SSI Disability program of certain temporary provisions in Title IX affecting the Disability Insurance program. These include, for example, making applicable to the SSI program required studies related to pain and the moratorium in the reviews of the mentally impaired.

#### **E. Effective date (sec. 308 of the bill)**

Except as otherwise provided, these provisions of the bill would apply with respect to cases involving only disability determinations pending in HHS or in court on or after the date of enactment.



#### IV. Cost Estimates; Vote of the Committee and Other Matters to be Discussed Under the Rules of the House

In compliance with clause (2)(1)(2)(B) of rule XI of the Rules of the House of Representatives, the Committee states that the bill was approved by voice vote.

In compliance with clause (2)(1)(3)(A) of rule IX, the Committee reports that the need for legislation to provide for necessary reforms in the administration of the disability insurance program has been confirmed by oversight hearings conducted by the Committee's Subcommittee on Social Security.

In compliance with clause (2)(1)(3)(D) of rule XI, the Committee states that no oversight findings or recommendations have been submitted to the Committee by the Committee on Government Operations with respect to the subject matter contained in the bill.

In compliance with clause (2)(1)(4) of rule XI, the Committee estimates that enactment of the bill will not create inflationary pressures on the national economy.

In compliance with clause (2)(1)(3)(B) of rule XI, the Committee states that discussion of budgetary authority is contained in the report of the Congressional Budget Office.

In compliance with clause 7(a) of rule XI, relative to the budget effect of the bill, the Committee states that it agrees with the estimates of the Congressional Budget Office.

#### A. Cost estimates prepared by Congressional Budget Office

In compliance with clause (2)(1)(3)(C) of rule XI, the Committee states that the Congressional Budget Office has examined the bill, as reported by the Committee, and has submitted the following statement.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, D.C., March 14, 1984.*

HON. DAN ROSTENKOWSKI,  
*Chairman, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed the provisions of H.R. 3755, the Social Security Disability Benefits Reform Act of 1984, as ordered reported by the Committee on Ways and Means on March 14, 1984. We have not received a recent copy of this bill. On the advice of your staff, however, we have prepared the attached cost estimate assuming the provisions in this bill are identical to those in Title IX of H.R. 4170, as ordered reported by the Committee on March 1, 1984.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER, *Director.*

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 3755.
2. Bill title: Social Security Disability Benefits Reform Act of 1984.



3. Bill status: As ordered reported by the White House Ways and Means Committee on March 14, 1984.

4. Bill purpose: To amend Title II of the Social Security Act to provide for reform of the disability determination process.

5. Estimated cost to the Federal Government: The following table shows the estimated costs of this bill to the federal government. These estimates assume an enactment date of May 1, 1984. The estimate was prepared without a draft of the bill, but it is assumed that the provisions will be identical to those in Title IX of H.R. 4170, as ordered reported by the Committee on Ways and Means. March 1, 1984.

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF H.R. 3755

[By fiscal year, in millions of dollars]

Budget function	1984	1985	1986	1987	1988	1989
Function 550: <sup>1</sup>						
Budget authority .....	3	10	11	7	8	9
Estimated outlays .....	3	10	11	7	8	9
Function 570:						
Budget authority .....	1	28	28	20	19	9
Estimated outlays .....	7	73	86	83	77	59
Function 650:						
Budget authority .....	-1	-15	-35	-55	-75	-105
Estimated outlays .....	46	238	268	268	271	195
Function 600: <sup>1</sup>						
Budget authority .....	1	7	10	11	13	14
Estimated outlays .....	1	7	10	11	13	14
Total costs of savings:						
Budget authority .....	4	30	14	-17	-35	-73
Estimated outlays .....	57	328	375	369	369	277

<sup>1</sup> Funding for entitlements that requires further appropriations action.

### *Basis for estimate*

This bill would change the disability process for those individuals who undergo continuing disability reviews (CDR's) and for those who apply for Disability Insurance (DI) and Supplemental Security Income (SSI) benefits. Historically, continuing disability reviews have been performed on medical diaried cases—those cases which the Social Security Administration (SSA) evaluates as having some chance of medical improvement within a specific length of time. In 1981, SSA began an intensified process of periodically reviewing all cases on the rolls not considered permanently disabled.

It is difficult to project the costs of the provisions in this bill for several reasons. First, there are little data available on the characteristics of the people who have been terminated from the DI rolls as a result of the continuing disability investigations. Second, the Administration has recently changed some of its policies regarding the review process, and it is unknown how these changes will affect the number of terminations from the program. Finally, the language of the provisions allows for various interpretations which would affect costs. This estimate is based on the interpretations of the bill provided by Committee staff.

This cost estimate assumes that 110,000 medical diary reviews would be performed annually. The number of periodic reviews is

assumed to decline from less than 300,000 in 1984 to 120,000 in 1989, as the percentage of beneficiaries already reviewed increases. Approximately 45 percent of the medical diary reviews are estimated to result in initial terminations of benefit payments, but CBO estimates about 57 percent of these beneficiaries would have their benefits restored after appeals are reviewed. For periodic reviews, the percentage of initial terminations is projected to decline from 40 percent in 1984 to 20 percent in 1989. About 55 percent of those initially terminated from the rolls in periodic reviews are estimated to have their benefits restored in the appeal process.

There are also costs to the Medicare program which would result from a larger number of recipients continuing to receive DI benefits because most DI beneficiaries also receive assistance from the Medicare program in either the Hospital Insurance (HI) or Supplemental Medical Insurance (SMI) components of that program. Estimates of these costs are based on the average number of disabled beneficiaries receiving HI and SMI and the average benefit payments for these programs. There are also costs to the Medicaid program because SSI beneficiaries generally receive Medicaid.

Table 2 displays CBO's outlay estimates by section of the bill. Following the table is a description of the methodology used for the estimates of the outlays for each section listed in Table 2.

#### *Termination of benefits based on medical improvement*

This provision would require SSA, with some exceptions, to provide "substantial evidence" that a beneficiary's disability has medically improved before SSA can terminate benefits as a result of a CDR. The bill does not specify what substantial evidence would be. Currently SSA is not required to prove medical improvement before terminating benefits.

This provision would affect those individuals who would not have medically improved since their last evaluation but whose benefits would be terminated under current law and regulations. Of those projected to lose benefits at the initial stage under current law, it is estimated that approximately 20 percent would not show medical improvement. However, of those 20 percent initially denied benefits under current law, it is projected that 85 percent would appeal and 75 percent of those who appeal would be continued on the rolls. Therefore, under current law, about 64 percent of the people losing benefits initially and whose disabilities have not improved would ultimately be continued on the DI rolls. Costs for this provision result from the continuation of benefits for the remaining 36 percent, who under current law, would not appeal the decision to end their benefits or who would not win their appeal and would be consequently dropped from the rolls. In 1985, the first full year this provision would be in effect, it is estimated that 6,400 people would be retained on the rolls as a result of this provision. The additional number of beneficiaries receiving DI as a result of this provision would fall to 2,000 by 1989 as CBO's estimate of the number of CDR's performed declines. The costs, including administrative expenses are estimated to rise from \$22 million in 1984 to \$133 million in 1989. This estimate, on the advice of staff of the Committee on Ways and Means, is assumed to be applied only to prospective cases. In SSI, only concurrent cases—those receiving both DI and

SSI—would be affected because no CDR's are planned for SSI only cases.

### *Multiple impairments*

This provision would require SSA to consider whether the combination of the applicant's disabilities is severe enough to keep the individual from working at the "significant gainful activity" level in the case where no one impairment is considered severe enough to warrant benefit payments. The SSA estimates that about 500 additional cases per year would be added to the rolls as a result of this provision. This would increase DI costs by a range of less than \$500,000 in 1984 to \$15 million in 1989. In SSI, about 150 cases would be added initially, increasing SSI costs by a negligible amount in 1984 and by \$3 million in 1989.

### *Face-to-face evidentiary hearings for reviews*

This provision would require SSA to provide for face-to-face evidentiary hearings at the initial determination level for those terminated as a result of CDR's after January 1, 1985. There are no benefit increases shown for this provision. Under current law, beginning in 1984, face-to-face evidentiary hearings will occur at the first level of appeal. It is possible that more people will be retained on the rolls by allowing evidentiary hearings one step earlier. However, it is equally possible that fewer people will choose to appeal their decisions further because of the opportunity to present their cases at the initial level. Assuming that there is no change in the number of people who ultimately lose benefits, there would be no cost associated with this provision. However, there would be added administrative costs at the initial level due to a higher workload, although these costs would be offset somewhat by administrative savings because of fewer projected reconsiderations. The estimate of administrative costs assumes that each review takes 22 hours and that there would be some additional expenditures required for office space and travel.

### *Continued payment during appeal*

This provision would provide for continued payment of disability benefits through the Administrative Law Judge (ALJ) level of appeal for those individuals who appeal SSA's decisions to end their benefits as a result of CDR's. The estimated costs, including administrative costs, are \$25 million in 1984, \$149 million in 1985, and declining to \$31 million in 1989. The costs arise as a result of extra benefits paid to those who ultimately lose their appeal but do not repay the interim benefits as required under this provision. The estimate assumes that seven months of additional benefits are paid to each individual and that 15 percent of those who are finally terminated repay the extra benefits. This repayment is expected to occur in the year after the benefits are paid.

### *Medical personnel qualifications*

This provision would require that a psychologist for a psychiatrist complete a medical evaluation of a claimant before the individual can be denied benefits. The SSA expects that about 1,000 individuals will be added to the rolls annually as a result of this



change in procedure. DI costs would range from \$7 million in 1985 to \$27 million in 1989, while SSI costs would total \$7 million by 1989.

### *Vocational rehabilitation*

This provision changes the regulations concerning benefit payments for individuals participating in vocational rehabilitation programs. The SSA estimates that about 300 individuals per year would be affected by this change. DI costs would range from negligible in 1984 to \$8 million in 1989. SSI costs would be insignificant.

### *Compliance with court orders*

This provision requires SSA to apply the decisions of the circuit courts of appeal to all beneficiaries residing within states within the circuit, until or unless the decision is overruled by the Supreme Court. This provision could substantially increase costs but these effects cannot be estimated since they would depend on the outcome of future court decisions.

### *Extension of section 1619a and 1619b*

Sections 1619a and 1619b provide SSI and Medicaid benefits to disabled individuals who work and who would not otherwise be eligible for benefits because their earnings exceed the "substantial gainful activity" level. These sections, which expired on December 31, 1983, are extended by these amendments through June 30, 1986. Section 1619a is estimated to add 575 persons to the SSI rolls in 1984 and 950 by 1986. Section 1619b is estimated to add 8,300 persons to the Medicaid rolls in 1984 and 10,500 by 1986.

6. Estimated cost to State and local government: A number of the provisions of this bill would increase expenditures of state and local governments. The estimated net impact of the bill on state and local expenditures is less than \$5 million a year.

The changes in SSI would increase state and local government costs because virtually all states supplement federal SSI benefits. By making more persons eligible for SSI benefits, state costs would increase. States are also affected by the added outlays in Medicaid because states finance a portion of the program. The current state financing share is 46 percent.

There could be some offsets to these added SSI and Medicaid costs to the extent that persons made eligible for DI and SSI by the bill might otherwise be eligible for general assistance or health care financed fully by states and localities. These potential offsets are not included in the cost estimate.

7. Estimate comparison: The Social Security Administration's latest estimate (January 13, 1984 and February 6, 1984) for this bill shows combined costs of about \$6 billion over the six year period from 1984-1989. The SSA has higher estimates for the sections regarding medical improvement and for continued payment of benefits through the appeals process. The major differences arise because SSA assumes that a greater number of CDR's will be done each year, because the provision on medical improvements is assumed to be applied retroactively and because they assume a large increase in the number of appeals to the ALJ level, which would greatly increase administrative costs. CBO has followed the Com-



mittee's intent that the medical improvement provision be applied only prospectively.

8. Previous CBO estimate: None.

9. Estimate prepared by: Stephen Chaikind, Kelly Lukins, and Janice Peskin.

10. Estimate approved by:

C. G. NUCKOLS  
(For James L. Blum,  
Assistant Director for Budget Analysis).

## B. Administration estimates

The Office of the Actuary, Social Security Administration, has estimated the impact of the bill on the disability trust fund over a 75-year period. Under II-B economic assumptions, the disability trust fund remains in actuarial balance. The following tables summarize the Administration's long-range and short-range estimates.

### ESTIMATED COST OF THE SOCIAL SECURITY DISABILITY PROVISIONS, FISCAL YEAR 1984-88

[In millions]

Provision	Fiscal year—					Total, 1984-88
	1984	1985	1986	1987	1988	
OASDI benefit payments.....	\$60	\$390	\$580	\$650	\$730	\$2,410
OASDI administrative expenses .....	25	105	130	126	131	517
Medicare .....	25	45	65	80	95	310
Medical .....	13	21	21	15	20	90
SSI .....	3	2	9	19	23	50
Total .....	120	563	805	890	999	3,377

Note:—These estimates were made by the Office of the Actuary, Social Security Administration, based on the alternative II-B assumptions of the 1983 Trustees' Reports as revised in November 1983.

Source: Social Security Administration, Office of the Actuary, January 1984.

### ESTIMATED LONG-RANGE FINANCIAL IMPACT OF THE SOCIAL SECURITY DISABILITY PROVISIONS

Bill section	Provision	Change in long-range OASDI actuarial balance (as percent of taxable payroll)
901	Standard of review for terminations of disability benefits.....	( <sup>1</sup> )
902	Study concerning evaluation of pain .....	( <sup>1</sup> )
903	Guidelines for disability determinations:	
	Multiple impairments.....	( <sup>1</sup> )
	Noncompetitive work.....	( <sup>1</sup> )
	Work evaluation in mental impairment cases <sup>2</sup> .....	( <sup>1</sup> )
904	Moratorium and revised criteria for mental impairment cases .....	( <sup>3</sup> )
905	Review procedure governing disability determinations affecting continued entitlement to disability benefits; demonstration projects relating to review of denials of disability benefit applications .....	( <sup>1</sup> )
906	Continuation of benefits through ALJ decisions .....	-0.01
907	Qualifications of medical professional evaluating mental impairments .....	( <sup>1</sup> )
908	Regulatory standards for consultative examinations.....	( <sup>1</sup> )
909	Administrative procedure and uniform standards .....	( <sup>1</sup> )
910	Compliance with certain court orders.....	( <sup>1</sup> )

ESTIMATED LONG-RANGE FINANCIAL IMPACT OF THE SOCIAL SECURITY DISABILITY PROVISIONS—  
Continued

Bill section	Provision	Change in long-range OASDI actuarial balance (as percent of taxable payroll)
911	Revision of vocational rehabilitation criteria.....	( <sup>1</sup> )
912	Advisory Council on Medical Aspects of Disability .....	( <sup>1</sup> )
913	Qualifying experience for appointment of certain staff attorneys to ALJ positions.....	( <sup>1</sup> )
Total <sup>4</sup> .....		— .02

<sup>1</sup> Change in long-range OASDI actuarial balance is less than 0.005 percent of taxable payroll.

<sup>2</sup> Report language urges full "work evaluation" by a vocational expert in "borderline" mental impairment cases.

<sup>3</sup> The financial effect of this provision is attributed to the Secretary's initiative of June 7, 1983 for revising the criteria for evaluating mental impairment cases. Illustrative estimates of the change in the long-range OASDI actuarial balance for this revision are — 0.03, — 0.07, and — 0.15 percent of taxable payroll based on the assumption that 10 percent, 25 percent of 50 percent of current mental impairment denials would be allowed (slightly higher percentages are assumed for current CDI terminations). At this time it is not known what provisions would be made to these criteria.

<sup>4</sup> Total includes the effect of interaction among sections.

Note: The estimates in this table are based on the alternative II-B assumptions of the 1983 Trustees Report.

Source: Social Security Administration, Office of the Actuary, Sept. 19, 1983.

## V. Changes in Existing Law Made by the Bill, As Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

### SOCIAL SECURITY ACT

\* \* \* \* \*

### TITLE II—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS

\* \* \* \* \*

### EVIDENCE, PROCEDURE, AND CERTIFICATION FOR PAYMENT

#### SEC. 205. (a) \* \* \*

(b)(1) The Secretary is directed to make findings of fact, and decisions as to the rights of any individual applying for a payment under this title. Any such decision by the Secretary which involves a determination of disability and which is in whole or in part unfavorable to such individual shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the Secretary's determination and the reason or reasons upon which it is based. Upon request by any such individual or upon request by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, surviving divorced father, husband, divorced husband, widower, surviving divorced husband, child, or parent who makes a showing in writing that his or her rights may be prejudiced by any decision the Secretary has rendered, he shall give such applicant and such other individual reasonable notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse his findings of

fact and such decision. Any such request with respect to such a decision must be filed within sixty days after notice of such decision is received by the individual making such request. *Reviews of disability determinations on which decisions relating to continued entitlement to benefits are based shall be governed by the provisions of section 221(d)(2).* The Secretary is further authorized, on his own motion, to hold such hearings and to conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this title. In the course of any hearing, investigation, or other proceeding, he may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Secretary even though inadmissible under rules of evidence applicable to court procedure.

[(2) In any case where—

[(A) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability,

[(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and

[(C) as a consequence of the finding described in subparagraph (B), such individual is determined by the Secretary not to be entitled to such benefits,

any reconsideration of the finding described in subparagraph (B) in connection with a reconsideration by the Secretary (before any hearing under paragraph (1) on the issue of such entitlement) of his determination described in subparagraph (C), shall be made only after opportunity for an evidentiary hearing, with regard to the finding described in subparagraph (B), which is reasonably accessible to such individual. Any reconsideration of a finding described in subparagraph (B) may be made either by the State agency or the Secretary where the finding was originally made by the State agency, and shall be made by the Secretary where the finding was originally made by the Secretary. In the case of a reconsideration by a State agency of a finding described in subparagraph (B) which was originally made by such State agency, the evidentiary hearing shall be held by an adjudicatory unit of the State agency other than the unit that made the finding described in subparagraph (B). In the case of a reconsideration by the Secretary of a finding described in subparagraph (B) which was originally made by the Secretary, the evidentiary hearing shall be held by a person other than the person or persons who made the finding described in subparagraph (B).]

(2) *Notwithstanding subsection (a)(2) of section 553 of title 5, United States Code, the rulemaking requirements of subsections (b) through (e) of such section shall apply to matters relating to benefits under this title. With respect to matters to which rulemaking requirements under the proceeding sentence apply, only those rules prescribed pursuant to subsections (b) through (e) of such section 553 and related provisions governing notice and comment rulemaking under subchapter II of chapter 5 of such title 5 (relating to administrative procedure) shall be binding at any level of review by a State*



agency or the Secretary, including any hearing before an administrative law judge.

\* \* \* \* \*

#### OTHER DEFINITIONS

SEC. 216. For the purposes of this title—

#### Spouse; Surviving Spouse

(a) \* \* \*

\* \* \* \* \*

#### Disability; Period of Disability

(i)(1) Except for purposes of sections 202(d), 202(e), 202(f), 223, and 225, the term “disability” means (A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months, or (B) blindness; and the term “blindness” means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of this paragraph as having a central visual acuity of 20/200 or less. The provisions of paragraphs (2)(A), 2(C), (3), (4), (5), and (6) of section 223(d) shall be applied for purposes of determining whether an individual is under a disability within the meaning of the first sentence of this paragraph in the same manner as they are applied for purposes of paragraph (1) of such section. Nothing in this title shall be construed as authorizing the Secretary or any other officer or employee of the United States to interfere in any way with the practice of medicine or with relationships between practitioners of medicine and their patients, or to exercise any supervision or control over the administration or operation of any hospital.

(2)(A) \* \* \*

\* \* \* \* \*

(D) A period of disability shall end with the close of whichever of the following months is the earlier: (i) the month preceding the month in which the individual attains retirement age (as defined in section 216(l)), or (ii) the month preceding (I) the termination month (as defined in section 223(a)(1)), or, if earlier (II) the first month for which no benefit is payable by reason of section 223(e), where no benefit is payable for any of the succeeding months during the 15-month period referred to in such section. *A period of disability may be determined to end on the basis of a finding that the physical or mental impairment on the basis of which the finding of disability was made has ceased, does not exist, or is not disabling only if such finding is supported by substantial evidence described in paragraph (1), (2), or (3) of section 223(f). Nothing in the preceding sentence shall be construed to require a determination that a period of disability continues if evidence on the record at the*



*time any prior determination of such period of disability was made, or new evidence which relates to such determination, shows that the prior determination was either clearly erroneous at the time it was made or was fraudulently obtained, or if the individual is engaged in substantial gainful activity. In any case in which there is no available medical evidence supporting a prior disability determination, nothing in this subparagraph shall preclude the Secretary, in attempting to meet the requirements of the preceding provisions of this subparagraph, from securing additional medical reports necessary to reconstruct the evidence which supported such prior disability determination.*

\* \* \* \* \*

#### DISABILITY DETERMINATIONS

##### SEC. 221. (a)(1) \* \* \*

\* \* \* \* \*

(d) **[Any]** (a) *Except in cases to which paragraph (2) applies, any individual dissatisfied with any determination under subsection (a), (b), (c), or (g) shall be entitled to a hearing thereon by the Secretary to the same extent as is provided in section 205(b) with respect to decisions of the Secretary, and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).*

(2)(A) *In any case where—*

(i) *an individual is a recipient of disability insurance benefits, child's, widow's, or widower's insurance benefits based on disability, mother's or father's insurance benefits based on the disability of the mother's or father's child who has attained age 16, or benefits under title XVIII based on disability, and*

(ii) *the physical or mental impairment on the basis of which such benefits are payable is determined by a State agency (or the Secretary in a case to which subsection (g) applies) to have ceased, not to have existed, or to no longer be disabling,*  
*such individual shall be entitled to notice and opportunity for review as provided in this paragraph.*

(B)(i) *Any determination referred to in subparagraph (A)(A)(ii)—*

(I) *which has been prepared for issuance under this section by a State agency (or the Secretary) for the purpose of providing a basis for a decision of the Secretary with regard to the individual's continued rights to benefits under this title (including any decision as to whether an individual's rights to benefits are terminated or otherwise changed, and*

(II) *which is in whole or in part unfavorable to such individual,*

*shall remain pending until after the notice and opportunity for review provided in this subparagraph.*

(ii) *Any such pending determination shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence and stating such determination, the reason or reasons upon which such determination is based, the right to a review of such determination (including the right to make a personal appearance as provided in this subparagraph), the right to submit additional evidence prior to or during such review as provided in this*

clause, and that, if such review is not requested, the individual will not be entitled to a hearing on such determination and such determination will be the disability determination upon which the final decision of the Secretary on entitlement will be based. Such statement of the case shall be transmitted in writing to such individual. Upon request by any such individual, or by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, husband, divorced husband, widower, surviving divorced husband, surviving divorced father, child, or parent, who makes a showing in writing that his or her rights may be prejudiced by such determination, he or she shall be entitled to a review by the State agency (or the Secretary in a case to which subsection (g) applies) of such determination, including the right of such individual to make a personal appearance, and may submit additional evidence for purposes of such review prior to or during such review. Any such request must be filed within 30 days after notice of the pending determination is received by the individual making such request. Any review carried out by a State agency under this subparagraph shall be made in accordance with the pertinent provisions of this title and regulations thereunder.

(iii) A review under this subparagraph shall include a review of evidence and medical history in the record at the time such disability determination is pending, shall examine any new medical evidence submitted or obtained for purposes of the review, and shall afford the individual requesting the review the opportunity to make a personal appearance with respect to the case at a place which is reasonably accessible to such individual.

(iv) On the basis of the review carried out under this subparagraph, the State agency (or the Secretary in a case to which subsection (g) applies) shall affirm or modify the pending determination and issue the pending determination, as so affirmed or modified, as the disability determination under section (a), (c), (g), or (h) (as applicable).

(C) Any disability determination described in subparagraph (A)(ii) which is issued by the State agency (or the Secretary) and which is in whole or in part unfavorable to the individual requesting the review shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the determination, the reason or reasons upon which the determination is based, the right (in the case of an individual who has exercised the right to review under subparagraph (B)) of such individual to a hearing under subparagraph (D), and the right to submit additional evidence prior to or at such a hearing. Such statement of the case shall be transmitted in writing to such individual and his or her representative (if any).

(D)(i) An individual who has exercised the right to review under subparagraph (B) and who is dissatisfied with the disability determination referred to in subparagraph (C) shall be entitled to a hearing thereon to the same extent as is provided in section 205(b) with respect to decisions of the Secretary on which hearings are required under such section, and to judicial review of the Secretary's final decision after such hearings as is provided in section 205(g). Nothing in this section shall be construed to deny an individual his or her right to notice and opportunity for hearing under section 205(b)

*with respect to matters other than the determination referred to in subparagraph (A)(ii).*

*(ii) Any hearing referred to in clause (i) shall be held before an administrative law judge who has been duly appointed in accordance with section 3105 of title 5, United States Code.*

\* \* \* \* \*

[(i)] (h)(1) In any case where an individual is or has been determined to be under a disability, the case shall be reviewed by the applicable State agency or the Secretary (as may be appropriate), for purposes of continuing eligibility, at least once every 3 years, subject to paragraph (2); except that where a finding has been made that such disability is permanent, such reviews shall be made at such times as the Secretary determines to be appropriate. Reviews of cases under the preceding sentence shall be in addition to, and shall not be considered as a substitute for, any other reviews which are required or provided for under or in the administration of this title.

(2) The requirement of paragraph (1) that cases be reviewed at least every 3 years shall not apply to the extent that the Secretary determines, on a State-by-State basis, that such requirement should be waived to insure that only the appropriate number of such cases are reviewed. The Secretary shall determine the appropriate number of cases to be reviewed in each State after consultation with the State agency performing such reviews, based upon the backlog of pending reviews, the projected number of new applications for disability insurance benefits, and the current and projected staffing levels of the State agency, but the Secretary shall provide for a waiver of such requirement only in the case of a State which makes a good faith effort to meet proper staffing requirements for the State agency and to process case reviews in a timely fashion. The Secretary shall report annually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the determinations made by the Secretary under the preceding sentence.

(3) The Secretary shall report semiannually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the number of reviews of continuing disability carried out under paragraph (1), the number of such reviews which result in an initial termination of benefits, the number of requests for reconsideration of such initial termination or for a hearing with respect to such termination under subsection (d), or both, and the number of such initial terminations which are overturned as the result of a reconsideration or hearing.

*(i) A determination under subsection (a), (c), (g), or (h) that an individual is not under a disability by reason of a mental impairment shall be made only if, before its issuance by the State (or the Secretary), a qualified psychiatrist or psychologist who is employed by the State agency or the Secretary (or whose services are contracted for by the state agency or the Secretary) has completed the medical portion of the case review, including any applicable residual functional capacity assessment.*



(j) *The Secretary shall prescribe regulations which set forth, in detail—*

*(1) the standards to be utilized by State disability determination services and Federal personnel in determining when a consultative examination should be obtained in connection with disability determinations;*

*(2) standards for the type of referral to be made; and*

*(3) procedures by which the Secretary will monitor both the referral processes used and the product of professionals to whom cases are referred.*

*Nothing in this subsection shall be construed to preclude the issuance, in accordance with section 533(b)(A) of title 5, United States Code, of interpretive rules, general statements of policy, and rules of agency organization relating to consultative examinations if such rules and statements are consistent with such regulations.*

## REHABILITATION SERVICES

### Referral for Rehabilitation Services

SEC. 222. (a) \* \* \*

\* \* \* \* \*

### Costs of Rehabilitation Services from Trust Funds

(d)(1) For purposes of making vocational rehabilitation services more readily available to disabled individuals who are—

(A) entitled to disability insurance benefits under section 223,

(B) entitled to child's insurance benefits under section 202(d) after having attained age 18 (and are under a disability),

(C) entitled to widow's insurance benefits under section 202(e) prior to attaining age 60, or

(D) entitled to widower's insurance benefits under section 202(f) prior to attaining 60,

to the end that savings accrue to the Trust Funds as a result of rehabilitating such individuals [into substantial gainful activity], there are authorized to be transferred from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund each fiscal such sums as may be necessary to enable the Secretary to reimburse the State for the reasonable and necessary costs of vocational rehabilitation services furnished such individual (including services during their waiting periods), under a State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), [which result in their performance of substantial gainful activity which lasts for a continuous period of nine months] (i) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for a continuous period of nine months, (ii) in cases where such individuals receive benefits as a result of section 225(b) (except that no reimbursement under this paragraph shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful



*activity or the close of the month in which his or her entitlement to such benefits ceases, whichever first occurs), and (iii) in cases where such individuals, without good cause, refuse to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation. The determination that the vocational rehabilitation services contributed to the successful return of such individuals to substantial gainful activity, the determination that an individual, without good cause, refused to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation, and the determination of the amount of costs to be reimbursed under this subsection shall be made by the Commissioner of Social Security in accordance with criteria formulated by him.*

\* \* \* \* \*

## DISABILITY INSURANCE BENEFIT PAYMENTS

### Disability Insurance Benefits

SEC. 223. (a)(1) \* \* \*

\* \* \* \* \*

### Definition of Disability

(d)(1) \* \* \*

(2) For purposes of paragraph (1)(A)

(A) \* \* \*

\* \* \* \* \*

*(C) In determining whether an individuals physical or mental impairment or impairments are of such severity that he or she is unable to engage in substantial gainful activity, the Secretary shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity.*

\* \* \* \* \*

### Standard of Review for Termination of Disability Benefits

*(f) A recipient of benefits under this title or title XVIII based on the disability of any individual may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—*

*(1) substantial evidence which demonstrates that there has been medical improvement in the individual's impairment or combination of impairments so that—*

*(A) the individual is now able to engage in substantial gainful activity, or*

*(B) if the individual is a widow or surviving divorced wife under section 202(e) or a widower a surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is no longer deemed under regula-*

tions prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity; or

(2) substantial evidence which—

(A) consists of new medical evidence and (in a case to which clause (ii) does not apply) a new assessment of the individual's residual functional capacity and demonstrates that, although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology so that—

(i) the individual is now able to engage in substantial gainful activity, or

(ii) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is no longer deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity; or

(B) demonstrates that, although the individual has not improved medically, he or she has undergone vocational therapy so that the requirements of clause (i) or (ii) of subparagraph (A) are met; or

(3) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore—

(A) the individual is able to engage in substantial gainful activity, or

(B) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is not deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging activity.

Nothing in this subsection shall be construed to require a determination that a recipient of benefits under this title or title XVIII based on an individual's disability is entitled to such benefits if evidenced on the record at the time any prior determination of such entitlement to disability was made, or new evidence which relates to that determination, shows that the prior determination was either clearly erroneous at the time it was made or was fraudulently obtained, or if the individual is engaged in substantial gainful activity. In any case in which there is no available medical evidence supporting a prior disability determination, nothing in this subsection shall preclude the Secretary, in attempting to meet the requirements of the preceding provisions of this subsection, from securing additional medical reports necessary to reconstruct the evidence which supported such prior disability determination. For purposes of this subsection, a benefit under this title is based on an individual's disability if it is a disability insurance benefit, a child's, widow's, or widower's insurance benefit based on disability, or a mother's or fa-

*ther's insurance benefit based on the disability of the mother's or father's child who has attained age 16.*

### Continued Payment of Disability Benefits During Appeal

(g)(1) In any case where—

(A) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability,

(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and as a consequence such individual is determined not to be entitled to such benefits, and

(C) as timely request [for a hearing under section 221(d), or for an administrative review prior to such hearing] *for review under section 221(d)(2)(B) or for a hearing under section 221(d)(2)(D)* is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits, [and the payment of any other benefits under this Act based on such individual's wages and self-employment income (including benefits under title XVIII)], *the payment of any other benefits under this title based on such individual's wages and self-employment income, the payment of mother's or father's insurance benefits, to such individual's mother or father based on the disability of such individual as a child who has attained age 16, and the payment of benefits under title XVIII based on such individual's disability,* continued for an additional period beginning with the first month beginning after the date of the enactment of this subsection for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (i) the month preceding the month in which a decision is made after such a hearing, or (ii) the month preceding the month in which no such request for [a hearing or an administrative review] *review or a hearing* is pending [, or (ii) June 1984].

\* \* \* \* \*

(3) The provisions of paragraphs (1) and (2) shall apply with respect to determinations (that individuals are not entitled to benefits) [which are made—

(A) on or after the date of the enactment of this subsection, or prior to such date but only on the basis of a timely request for a hearing under section 221(d), or for an administrative review prior to such hearing, and

(B) prior to December 7, 1983.] *which are made on or after the date of the enactment of this subsection, or prior to such date but only on the basis of a timely request for a hearing under section 221(d), or for an administrative review prior to such hearing.*



**[EFFECTIVE AFTER DECEMBER 31, 1984]**

(3) The provisions of paragraphs (1) and (2) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made—

- (A) on or after the date of the enactment of this subsection, or prior to such date but only on the basis of a timely request for [a hearing under section 221(d), or for an administrative review prior to such hearing,] review under section 221(d)(2)(B) or for a hearing under section 221(d)(2)(D), and
- (B) prior to December 7, 1983.

\* \* \* \* \*

**COMPLIANCE WITH COURT OF APPEALS DECISION**

*Sec. 234. (a) Except as provided in subsection (b), if, in any decision in a case to which the Department of Health and Human Services or an officer or employee thereof is a party, a United States court of appeals—*

*(1) interprets a provision of this title or of any regulation prescribed under this title, and*

*(2) requires such Department or such officer or employee to apply or carry out the provision in a manner which varies from the manner in which the provision is generally applied or carried out in the circuit involved,*

*the Secretary shall acquiesce in the decision and apply the interpretation with respect to all individuals and circumstances covered by the provision in the circuit until a different result is reached by a ruling by the Supreme Court of the United States on the issue involved or by a subsequently enacted provision of Federal law.*

*(b) Acquiescence shall not be required under subsection (a) during the pendency of any direct appeal of the case by the Secretary under section 1252 of title 28, United States Code, or any request for review of the case by the Secretary under section 1254 of such title if such direct appeal or request for review is filed during the period of time allowed for such filing. If the Supreme Court finds that the requirements for the direct appeal under such section 1252 have not been met or denies a request for review under such section 1254, the Secretary shall resume acquiescence in the decision of the court of appeals in accordance with subsection (a) from the date of such finding or denial.*

\* \* \* \* \*

**TITLE VII—ADMINISTRATION**

\* \* \* \* \*

**SEC. 704.** The Secretary shall make a full report to Congress, within one hundred and twenty days after the beginning of each regular session, of the administration of the functions with which he is charged under this Act. *Each such report shall contain a comprehensive description of the current status of the disability insurance program under title II and the program of benefits for the blind and disabled under title XVI (including, in the case of the reports made in 1984, 1985, and 1986, any advice and recommenda-*



tions provided to the Secretary by the Advisory Council on Medical Aspects of Disability, with respect to disability standards, policies, and procedures, during the preceding year). In addition to the number of copies of such report authorized by other law to be printed, there is hereby authorized to be printed not more than five thousand copies of such report for use by the Secretary for distribution to Members of Congress and to State and other public or private agencies or organizations participating in or concerned with the social security program.

\* \* \* \* \*

## TITLE XVI—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

\* \* \* \* \*

### PART A—DETERMINATION OF BENEFITS

\* \* \* \* \*

#### MEANING OF TERMS

#### AGED, BLIND, OR DISABLED INDIVIDUAL

SEC. 1614. (a)(1) \* \* \*

\* \* \* \* \*

(3)(A) \* \* \*

\* \* \* \* \*

(G) *In determining whether an individual's physical or mental impairment or impairments are of such severity that he or she is unable to engage in substantial gainful activity, the Secretary shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity.*

\* \* \* \* \*

(5) *A recipient of benefits based on disability under this title may be determined not be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—*

(A) *substantial evidence which demonstrates that there has been medical improvement in the individual's impairment or combination of impairments so that the individual is now able to engage in substantial gainful activity; or*

(B) *substantial evidence (except in the case of an individual eligible to receive benefits under section 1619) which—*

*(i) consists of new medical evidence and a new assessment of the individual's residual functional capacity and demonstrates that, although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology so that the individual is now able to engage in substantial gainful activity, or*

(ii) demonstrates that, although the individual has not improved medically, he or she has undergone vocational therapy so that he or she is now able to engage in substantial gainful activity; or

(C) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore the individual is able to engage in substantial gainful activity.

Nothing in this paragraph shall be construed to require a determination that a recipient of benefits under this title based on disability is entitled to such benefits if evidence on the record at the time any prior determination of such entitlement to benefits was made, or new evidence which relates to that determination, shows that the prior determination was either clearly erroneous at the time it was made or was fraudulently obtained, or if the individual (unless he or she is eligible to receive benefits under section 1619) is engaged in substantial gainful activity. In any case in which there is no available medical evidence supporting a prior determination of disability nothing in this paragraph shall preclude the Secretary, in attempting to meet the requirements of the preceding provisions of this paragraph, from securing additional medical reports necessary to reconstruct the evidence which supported such prior determination.

\* \* \* \* \*

#### REHABILITATION SERVICES FOR BLIND AND DISABLED INDIVIDUALS

##### SEC. 1615. (a) \* \* \*

\* \* \* \* \*

(d) The Secretary is authorized to reimburse to the State agency administering or supervising the administration of a State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act the costs incurred under such plan in the provision of rehabilitation services to individuals who are referred for such services pursuant to subsection (a) [if such services result in their performance of substantial gainful activity which lasts for a continuous period of nine months] (1) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for continuous periods of nine months, (2) in cases where such individuals are determined to be no longer entitled to benefits under this title because the physical or mental impairments on which the benefits are based have ceased, do not exist, or are not disabling (and no reimbursement under this subsection shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month with which his or her entitlement to such benefits ceases, whichever first occurs), and (3) in cases where such individuals, without good cause, refuse to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude

*their successful rehabilitation. The determination of the amount of costs to be reimbursed under this subsection shall be made by the Commissioner of Social Security in accordance with criteria determined by him in the same manner as under section 222(d)(1).*

\* \* \* \* \*

## BENEFITS FOR INDIVIDUALS WHO PERFORM SUBSTANTIAL GAINFUL ACTIVITY DESPITE SEVERE MEDICAL IMPAIRMENT

### SEC. 1619. (a) \* \* \*

\* \* \* \* \*

*(c) The Secretary of Health and Human Services and the Secretary of Education shall jointly develop and disseminate information, and establish training programs for staff personnel, with respect to the potential availability of benefits and services for disabled individuals under the provisions of this section. The Secretary of Health and Human Services shall provide such information to individuals who are applicants for and recipients of benefits based on disability under this title and shall conduct such programs for the staffs of the District offices of the Social Security Administration. The Secretary of Education shall conduct such programs for the staffs of the State Vocational Rehabilitation agencies, and in cooperation with such agencies shall also provide such information to other appropriate individuals and to public and private organizations and agencies which are concerned with rehabilitation and social services or which represent the disabled.*

\* \* \* \* \*

## PART B—PROCEDURAL AND GENERAL PROVISIONS

### PAYMENTS AND PROCEDURES

#### Payment of Benefits

### SEC. 1631. (a)(1) \* \* \*

\* \* \* \* \*

*(7)(A) In any case where—*

*(i) an individual is a recipient of benefits based on disability or blindness under this title,*

*(ii) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and as a consequence such individual is determined not to be entitled to such benefits, and*

*(iii) a timely request for review or for a hearing is pending with respect to the determination that he is not so entitled,*

*such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits continued for an additional period beginning with the first month beginning after the date of the enactment of this paragraph for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of*  
*(I) the month preceding the month in which a decision is made after*



such a hearing, or (II) the month preceding the month in which no such request for review or a hearing is pending.

(B)(i) If an individual elects to have the payment of his benefits continued for an additional period under subparagraph (A), and the final decision of the Secretary affirms the determination that he is not entitled to such benefits, any benefits paid under this title pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this title, except as otherwise provided in clause (ii).

(ii) If the Secretary determines that the individual's appeal of his termination of benefits was made in good faith, all of the benefits paid pursuant to such individual's election under subparagraph (A) shall be subject to waiver consideration under the provisions of subsection (b)(1).

(C) The provisions of subparagraphs (A) and (B) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made on or after the date of the enactment of this paragraph, or prior to such date but only on the basis of a timely request for review or for a hearing.

\* \* \* \* \*

#### Procedures; Prohibitions of Assignments; Representation of Claimants

(d)(1) The provisions of section 207 and subsections (a) (b)(2), (d), (e), and (f) of section 205 shall apply with respect to this part to the same extent as they apply in the case of title II.

\* \* \* \* \*

#### ADMINISTRATION

SEC. 1633. (a) \* \* \*

\* \* \* \* \*

(c) Section 234 shall apply with respect to decisions of United States courts of appeals involving interpretations of provisions of this title or of regulations prescribed under this title (and requiring action with respect to such provisions) in the same manner and to the same extent as it applies with respect to decisions involving interpretations of provisions of title II or of regulations prescribed thereunder (and requiring action with respect to such provisions).

\* \* \* \* \*

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#### PUBLIC LAW 97-455

AN ACT To amend Internal Revenue Code of 1954 to reduce the rate of certain taxes paid to the Virgin Islands on Virgin Islands source income, to amend the Social Security Act to provide for a temporary period that payment of disability benefits may continue through the hearing stage of the appeals process, and for other purposes.

\* \* \* \* \*



**[SEC. 4. EVIDENTIARY HEARINGS IN RECONSIDERATIONS OF DISABILITY BENEFIT TERMINATIONS.**

**[(a) IN GENERAL.**—Section 205(b) of the Social Security Act is amended

**[(1)** by inserting “(1)” after “(b)”; and

**[(2)** by adding at the end thereof the following new paragraph:

**[(“2) In any case where—**

**[(“A) an individual is a recipient of disability insurance benefits, or of child’s, widow’s, or widower’s insurance benefits based on disability,**

**[(“B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and**

**[(“C) as a consequence of the finding described in subparagraph (B), such individual is determined by the Secretary not to be entitled to such benefits.**

any reconsideration of the finding described in subparagraph (B), in connection with a reconsideration by the Secretary (before any hearing under paragraph (1) on the issue of such entitlement) of his determination described in subparagraph (C), shall be made only after opportunity for an evidentiary hearing, with regard to the finding described in subparagraph (B), which is reasonably accessible to such individual. Any reconsideration of a finding described in subparagraph (B) may be made either by the State agency or the Secretary where the finding was originally made by the State agency, and shall be made by the Secretary where the finding was originally made by the Secretary. In the case of a reconsideration by a State agency of a finding described in subparagraph (B) which was originally made by such State agency, the evidentiary hearing shall be held by an adjudicatory unit of the State agency other than the unit that made the finding described in subparagraph (B). In the case of a reconsideration by the Secretary of a finding described in subparagraph (B) which was originally made by the Secretary, the evidentiary hearing shall be held by a person other than the person or persons who made the finding described in subparagraph (B).”.

**[(b) EFFECTIVE DATE.**—The amendments made by subsection (a) shall apply with respect to reconsiderations (of findings described in section 205(b)(2)(B) of the Social Security Act) which are requested on or after such date as the Secretary Health and Human Services may specify, but in any event not later than January 1, 1984.

**[SEC. 5. CONDUCTS OF FACE-TO-FACE RECONSIDERATIONS IN DISABILITY CASES.**

**[The Secretary of Health and Human Services shall take such steps as may be necessary or appropriate to assure public understanding of the importance the Congress attaches to the face-to-face reconsiderations provided for in section 205(b)(2) of the Social Security Act (as added by section 4 of this Act). For this purpose the Secretary shall—**

**[(1) provide for the establishment and implementation of procedures for the conduct of such reconsiderations in a manner which assures that beneficiaries will receive reasonable notice and information with respect to the time and place**

of reconsideration and the opportunities afforded to introduce evidence and be represented by counsel; and

[(2) advise beneficiaries who request or are entitled to request such reconsiderations of the procedures so established, of their opportunities to introduce evidence and be represented by counsel at such reconsiderations, and of the importance of submitting all evidence that relates to the question before the Secretary or the State agency at such reconsideration.]

\* \* \* \* \*

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## SECTION 201 OF THE SOCIAL SECURITY DISABILITY AMENDMENTS OF 1980

### BENEFITS FOR INDIVIDUALS WHO PERFORM SUBSTANTIAL GAINFUL ACTIVITY DESPITE SEVERE MEDICAL IMPAIRMENT

SEC. 201. (a) \* \* \*

\* \* \* \* \*

(d) The amendments made by subsections (a) and (b) shall become effective on January 1, 1981, but [shall remain in effect only for a period of three years after such effective date.] *shall remain in effect only through June 30, 1986.*

\* \* \* \* \*

## SOCIAL SECURITY DISABILITY AMENDMENTS OF 1984

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MAY 18 (legislative day, MAY 14), 1984.—Ordered to be printed

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Mr. DOLE, from the Committee on Finance,  
submitted the following

## REPORT

together with

## ADDITIONAL VIEWS

[To accompany S. 476]

The Committee on Finance, to which was referred the bill (S. 476) to amend title II of the Social Security Act to require a finding of medical improvement when disability benefits are terminated, to provide for a review and right to personal appearance prior to termination of disability benefits, to provide for uniform standards in determining disability, to provide continued payment of disability benefits during the appeals process, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and an amendment to the title and recommends that the bill as amended do pass.

## I. SUMMARY OF SOCIAL SECURITY DISABILITY PROVISIONS

The bill (S. 476), as amended by the Committee, modifies the standards and procedures to be used in determining disability and continuing eligibility for benefits under the Social Security Disability Insurance (DI) and Supplemental Security Income (SSI) programs. In addition, the bill makes a number of changes to improve the accuracy of disability determinations, the uniformity of decisions between the different levels of adjudication, and the consistency of such decisions with Federal law and standards. Provisions are also included to ensure the adequacy of financing for the DI program.

## MEDICAL IMPROVEMENT

Modifies, for a period of 3½ years, the requirements and procedures used for determining continuing eligibility for social security disability benefits. If the Secretary finds that a beneficiary undergoing review has not medically improved, the Secretary must show that there has been one of the following improvements or changes in circumstances prior to determining whether such beneficiary is disabled under the meaning of the law: (a) the individual has benefited from medical or vocational therapy or technology; (b) new or improved diagnostic or evaluative techniques indicate the individual's impairment(s) is not as disabling as believed at the time of the last decision; (c) the prior determination was fraudulently obtained; or (d) there is demonstrated substantial reason to believe that the prior determination was erroneous. If any of these factors are met, the Secretary must then determine whether the individual can perform substantial gainful activity.

If the Secretary finds that the evidence does not show that the individual's condition is the same as or worse than at the time of the prior determination, the Secretary would determine whether the individual can perform substantial gainful activity.

(Benefits also would be terminated if the individual is currently engaging in substantial gainful activity or if the individual cannot be located or fails, without good cause, to cooperate in the review or to follow prescribed treatment that could be expected to restore his ability to work.)

This new standard, which expires December 31, 1987, would be applied to future determinations of continuing eligibility to individuals who currently have claims properly pending in the administrative appeals process, and to certain cases pending in court.

## CONTINUATION OF PAYMENTS DURING APPEAL

Reauthorizes, until June 1, 1986, the provision which permits individuals notified of a termination decision to elect to have disability insurance (DI) benefits and Medicare coverage continued during appeal until the administrative law judge hearing decision.

## UNIFORM STANDARDS

Makes the Social Security Administration (SSA) subject to the rulemaking requirements of the Administrative Procedure Act on matters relating to the determination of disability and the payment of disability insurance benefits.

## MORATORIUM ON MENTAL IMPAIRMENT REVIEWS

Suspends eligibility reviews for individuals with disabilities based on mental impairments pending a revision of eligibility criteria. Also, require redetermination of eligibility under the new criteria (and reinstatement of benefits where appropriate) for individuals denied benefits after enactment and prior to the revision of the criteria, and to those terminated from the rolls since June 7, 1983.



## QUALIFICATIONS OF MEDICAL PROFESSIONALS EVALUATING MENTAL IMPAIRMENTS

Requires the Secretary to make every reasonable effort to ensure that a qualified psychiatrist or psychologist completes the medical portion of the evaluation or assessment of residual functional capacity in mental impairment cases in which a decision unfavorable to the claimant or beneficiary is made.

## NONACQUIESCENCE IN COURT ORDERS

Requires the Secretary to send to the Committees on Finance and Ways and Means, and publish in the Federal Register, a statement of the Secretary's decision, and the specific facts and reasons in support of such decision, to acquiesce or not acquiesce in U.S. Court of Appeals decisions affecting the Social Security Act or regulations issued thereunder. In cases where the Secretary is acquiescing, the reporting requirement would apply only to significant decisions.

## MULTIPLE IMPAIRMENTS

Requires the Secretary, in determining the medical severity of an individual's condition, to consider the combined effect of all of the individual's impairments without regard to whether any one impairment itself would be considered severe.

## EVALUATION OF PAIN

Directs the Secretary to appoint a Commission of experts (including significant representation from the field of medicine as well as other appropriate specialties such as law and administration) to conduct a study concerning the evaluation of pain in determining eligibility for disability benefits. This Commission would be directed to report by December 1986.

Pending the results of this study and any Congressional action which might be based on it, incorporates into the statute a requirement that disability determinations take into consideration subjective allegations of pain only to the extent they are consistent with medical signs and findings which show the existence of a medical condition which could reasonably be expected to produce the alleged pain, or other subjective symptoms (identical to the current rule applied by the Administration). The provision expires December 31, 1987.

## MODIFICATION OF RECONSIDERATION PREVIEW NOTICE

Requires the Secretary to conduct demonstration projects in five States in which the opportunity for personal appearance is provided prior to making a determination of ineligibility (in lieu of face-to-face hearings at reconsideration). This would apply only to periodic review cases. The Secretary would be required to report to Congress by April 1, 1986.

In addition, requires the Secretary to notify individuals upon initiating a periodic eligibility review that such review could result in

termination of benefits and that medical evidence may be submitted.

#### CONSULTATIVE EXAMINATIONS/MEDICAL EVIDENCE

Requires the Secretary to make every reasonable effort to obtain necessary medical evidence from an individual's treating physician prior to seeking a consultative examination. Additionally, the Secretary would be required to develop a complete medical history for individuals applying for benefits or undergoing review over at least the preceding 12-month period.

#### VOCATIONAL REHABILITATION

Authorizes reimbursement of vocational rehabilitation (VR) services provided to individuals who are receiving disability benefits under Section 225(b) of the Social Security Act and who medically recover while in VR. Reimbursable services would be those provided prior to his or her working at substantial gainful activity for 9 months, or prior to the month benefit entitlement ends, whichever is earlier.

#### SPECIAL BENEFITS FOR INDIVIDUALS WHO PERFORM SUBSTANTIAL GAINFUL ACTIVITY DESPITE SEVERE MEDICAL IMPAIRMENT

Reauthorizes, through June 30, 1987, Section 1619 of the Social Security Act, which permits severely impaired SSI recipients to receive a special payment and maintain medicaid eligibility despite earnings. In addition, the Secretaries of HHS and Education would be required to establish training programs on Section 1619 for staff personnel in SSA district offices and State VR agencies, and disseminate information to SSI applicants, recipients, and potentially interested public and private organizations.

#### ADVISORY COUNCIL

Directs the next quadrennial Social Security advisory council to study and make recommendations on various medical and vocational aspects of disability, including alternative approaches to work evaluation for SSI recipients, the effectiveness of vocational rehabilitation programs for SSI recipients, and the question of using medical specialists for completing medical and vocational forms used by State agencies. The council would be authorized to convene task forces of experts to deal with specialized areas. Members of the council must be appointed by June 1, 1985, and the report is scheduled to be issued by December 31, 1986.

#### FREQUENCY OF PERIODIC REVIEWS

Requires the Secretary, within 6 months of enactment, to issue regulations establishing the standards to be used in determining the frequency of periodic eligibility reviews. Pending issuance of such regulations, no individual could be reviewed more than once.

## MONITORING OF REPRESENTATIVE PAYEES

Requires the Secretary to: (1) evaluate the qualifications of prospective payees either prior to or within 45 days following certification, (2) establish a system of annual accountability monitoring for cases in which payments are made to someone other than the entitled individual, or parent or spouse living in the same household, and (3) increase the penalties for misuse of benefits by representative payees. Also, requires the Secretary to report to Congress within 6 months of enactment on the implementation of this provision, and to report annually on the number of cases of misused funds and the disposition of such cases.

### FAIL-SAFE

Requires the Secretary to notify the Congress by July 1, if the DI fund is projected to decline to less than 20 percent of a year's benefits. If Congress took no other action, the Secretary would scale back (in part or in full) the next cost-of-living increase for disability beneficiaries as necessary to keep the fund balance at 20 percent. If necessary, the Secretary would also scale back the increase in the benefit formula used for determining benefit levels for persons newly awarded disability benefits. Measurement of the fund assets would include any funds (now \$5 billion) loaned by the DI trust fund under the interfund borrowing authority.

## MEASURES TO IMPROVE COMPLIANCE WITH FEDERAL LAW

Requires the Secretary to federalize disability determinations in a State within 6 months of finding that the State is failing to follow Federal law and standards. (Such a finding must be made within 16 weeks of the time the State's failure to comply first comes to the attention of the Secretary.) This provision expires on December 31, 1987.

## II. BACKGROUND

When the Senate originally agreed to adopt a disability insurance program as a part of the Social Security Act in the 1950's, opponents of the legislation argued that it would be impossible to administer such a program tightly so as to limit its benefits to those truly disabled, and to keep its costs within the bounds of what Congress might believe to be an appropriate payroll tax level. The Congress did not accept this argument, and the program was enacted into law.

The developments with respect to the cost of the program since that time do indicate that there was some basis for the fears then expressed. The costs of the program have grown substantially and have shown a far greater degree of volatility than is true of the old-age and survivors insurance program. Nevertheless, the Congress has continued to believe that the Social Security Act disability programs provide important protections to American workers and their families and that, with careful administration, the programs can be continued within the constraints of cost levels which taxpayers can reasonably expect to bear.



The Congress has found it necessary on occasion to reemphasize its concern that the costs of the program not be allowed to grow out of control as a result of overbroad construction of the statute or lack of careful administration. In the 1967 amendments, for example, the Congress found it necessary to address situations in which some courts were, by broadly construing the statute, providing benefits on a basis not intended by Congress. Specifically, in 1967 the Congress added explicit language to continue to make clear that eligibility under the program was to be based on the inability to do any substantial work, without regard to the economy in the applicant's region or his inability to perform his prior occupation. In addition the Congress then added language requiring that benefits be based on objectively verifiable medical evidence.

In the 1980 disability amendments, Congress again found it necessary to deal with problems which had driven the cost of the program beyond the bounds that Congress had intended or found acceptable. Among the concerns addressed in the 1980 legislation were the problems of consistency of decision-making throughout the country and among different levels of the appeals process. Another major concern was the adequacy of administrative review both at the initial allowance level and in terms of continuing review of eligibility.

The concerns of the Congress that the Social Security Act disability programs be carefully administered, and that the definition of disability be applied in a way to assure that benefits are paid only to those who are unable to engage in substantial work, continue to be valid and are not in any sense repudiated by the pending legislation. The validity of the action taken in 1980 to provide for periodic review has been amply borne out by sample surveys showing substantial levels of ineligibility.

### III. GENERAL STATEMENT OF PURPOSE

The Committee recognizes that the review process mandated under the 1980 amendments has resulted in some significant problems and dislocations which were not anticipated and which contributed to an unprecedented degree of confusion in the operation of the program. The transition from a too loosely administered program with few post-entitlement reviews to a more tightly administered program with regular, periodic reviews revealed weaknesses and ambiguities which need to be dealt with.

It is the purpose of the Committee bill to deal with these problems while continuing the Congressional insistence that this program be tightly and carefully administered. The present-law requirement of a periodic review of eligibility for all disability beneficiaries is unchanged by this bill. For those not classified as permanently disabled, these reviews are to be carried out at least once every 3 years to assess their continuing eligibility for benefits. This bill only affects the standards of review, not the requirement that reviews be undertaken, nor the size of the population that must be reviewed.

Under present law, the standard of eligibility is in ability to work, and that standard applies both in initial applications and in continuing eligibility cases. The Committee bill does not change



this basic standard of eligibility, but it does provide protection or reassurance for those who are correctly and properly allowed on the rolls that they will remain on the rolls if their condition fails to improve. It does not assure anyone that they will not be reviewed. And it continues to require that terminations continue for those who should not be getting benefits. Some people were improperly allowed in the first place and it is not until their eligibility is reviewed that the error is detected; other people recover their work ability, either due to medical or vocational improvement. In these cases termination of benefits should and will occur.

Where there was previously only one standard of review, then, the Committee amendment adds a new standard—not to protect ineligible persons, but to provide a reassurance to those properly allowed. This standard, along with other features of the bill, will eliminate the existing confusion on this matter by reemphasizing the Congressional intent that there be national uniformity under Federal standards established by Congress and authoritatively interpreted in the regulations of the Department. Many of the other provisions of the bill also are intended to resolve ambiguities and reestablish the important principle that this is a national program which must be administered as such in accordance with Congressional intent. For example, the provision subjecting the program to the Administrative Procedure Act is intended to improve national uniformity and to assure that the regulations of the Secretary are accorded proper deference. Similarly the bill deals with the issues of multiple impairments and pain because there are major concerns about the need for national policy guidance with respect to these issues.

The Committee expects that the enactment of this legislation will, in a major way, restore confidence and credibility to the disability insurance program. The Committee recognizes that concerns have been expressed that the legislation could be misinterpreted as a license for lesser review and easier administration. There is no such intent. Lest there be any doubt, the Committee has included in the bill a fail-safe provision so that taxpayers may know that the Committee does not intend an open-ended commitment of taxpayer funds should either those who administer the program at the State and Federal level or the courts disregard the intent of the Committee in such a way as to cause the costs of the program to grow out of control. The Committee does not anticipate that this will happen, and does not expect that the fail-safe mechanism will be needed.

## IV. GENERAL DISCUSSION OF THE BILL

### MEDICAL IMPROVEMENT

#### (Section 2 of the bill)

#### *Present law*

There is no distinction in the law between how eligibility for disability benefits is to be determined for people newly applying for benefits and those currently on the rolls being reviewed to assess their continuing eligibility. Eligibility or ineligibility is based on

the standards of disability (in the law, regulations, and Commissioner's rulings) in effect at the time of the most recent decision.

Under the law, disability means inability to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to end in death or has lasted or can be expected to last for a continuous period of at least 12 months.

Prior to the Secretary's announcement, on April 13, 1984, of a temporary, nationwide moratorium on periodic reviews, 9 States were operating under a court-ordered medical improvement standard, and 9 States had suspended reviews pending implementation of a court-ordered medical improvement standard or pending action by circuit court.

#### *Committee amendment.*

The Committee amendment modifies, through December 31, 1987, the requirements and procedures used for determining continuing eligibility for disability benefits. If the Secretary finds that there has been no medical improvement in the individual's impairment(s) (other than medical improvement which is not related to his work ability), the Secretary would have the burden to show that there has been one of the following improvements or changes in circumstances prior to determining whether such beneficiary is disabled under the meaning of the law: (a) the individual has benefited from medical or vocational therapy or technology; (b) new or improved diagnostic or evaluative techniques indicate the individual's impairment(s) is not as disabling as believed at the time of the last decision; (c) the prior determination was fraudulently obtained; or (d) there is demonstrated substantial reason to believe that the prior determination was erroneous.

If none of the above factors are met, benefits would be continued (whether or not the individual would have been found to be able to perform substantial gainful activity). If any of these factors are met, the Secretary would then determine whether the individual can perform substantial gainful activity. If he can, benefits would be terminated.

If the Secretary finds that the evidence does not show that the individual's condition is the same as or worse than at the time of the prior determination, the Secretary would determine whether the individual can perform substantial gainful activity, and, if he can, benefits would be terminated. (Benefits would also be terminated if the individual is currently engaging in substantial gainful activity or if the individual cannot be located or fails, without good cause, to cooperate in the review or to follow prescribed treatment that could be expected to restore his ability to work.)

In making a determination, the Secretary shall consider the evidence in the file as well as any additional information concerning the claimant's current or prior condition that is secured by the Secretary or provided by the claimant. (The Secretary is thus not limited to considering only the prior decision or the evidence developed at the time of the prior decision.)

In the case of a finding relating to medical improvement, the burden of proof is on the claimant. Burden cannot be met by allegations regarding the beneficiary's condition; objective evidence

containing clinical findings, laboratory findings and diagnoses, as outlined in regulations, must be provided. In other words, for benefits to be continued, the individual must state and the evidence in the file must show that the individual's medical condition is the same as or worse than at the time of the last decision (or, if there is medical improvement, it is not related to work ability).

In the case of a finding relating to factors a-d, the Secretary has the burden of proof. In other words, for benefits to be terminated on the basis of any of these reasons, the evidence in the file must show that one of these factors is met.

The Committee bill requires that regulations to implement the medical improvement standard shall be published within 6 months of enactment.

### *Reasons for change*

The new standard of continuing eligibility is designed to respond to and address a number of serious problems in the disability review process. First and foremost, the Committee is reaffirming its commitment to and insistence upon a nationally uniform disability insurance program. In recent months, due both to independent actions by States that are in violation of Federal law and guidelines and to Court actions, the social security disability insurance program is no longer being administered in a nationally uniform manner, consistent with the goals of the Federal program. The issue of medical improvement and the standards to be applied in determining eligibility for people after they are on the benefit rolls has been one of the central issues of contention. This new standard is thus intended to make explicit to the States administering the disability insurance program and to the courts the standards to be applied in determining continuing eligibility for benefits—the standards as set forth in national policy by the Congress. As discussed below, the effective date of the medical improvement standard underscores the Committee's intention to ensure uniform application of the single standard of review.

Secondly, the Committee is reaffirming its commitment to and insistent upon a tightly administered disability insurance program. The standard included in the bill does not in any way relieve the Secretary of the obligation to carefully and regularly review the accuracy of the benefit rolls, as mandated by the 1980 disability amendments. Nor does it relieve the individual of the obligation to periodically reestablish his continuing eligibility. If the individual is found to have been allowed on the rolls erroneously, or on the basis of fraud, or if his condition has improved, either medically or vocationally, or is not as disabling as originally believed, benefits will be terminated if the individual can perform substandard gainful activity. Benefits will also be terminated if the individual is currently working, cannot be located, or fails, without good cause, to cooperate in the review or to follow prescribed treatment which could be expected to restore his ability to work. Clearly, it is not the Committee's intention to grandfather people onto the benefit rolls who can perform substantial gainful activity, as this would create a serious inequity—a double-standard—between current beneficiaries and new applications with identical impairments.



In this regard, the Committee considered carefully and rejected the proposal to shift the burden of proof in eligibility determinations from the claimant to the Government once the individual is on the benefit rolls. The weight of the evidence must demonstrate that the individual should remain on the rolls, not the reverse, where the weight of the evidence would have to warrant termination. In addition the Committee considered carefully and rejected the proposal to require that a quality or quantity of improvement (vocational or medical) be shown prior to determining whether the individual can work. The protections in the Committee amendment are for those whose conditions have remained the same or deteriorated since the time of their last disability decision. The amendment does not include protections for people who have improved, or who have failed to improve to some particular degree, so long as it is demonstrated that they can work. The Committee thus rejected putting up legal or procedural hurdles to removing from the rolls those people who can work and who have experienced some change in circumstances since the time of the last disability determination.

Third, the Committee is concerned that the confidence of the disabled population in the social security disability insurance program has been seriously eroded in recent years as a result of the periodic review process. This amendment is designed to provide reassurance to the severely impaired population who have every right to expect their benefits to be continued under this program. If an individual is correctly and properly allowed onto the benefit rolls, and if the evidence shows that his medical condition has not improved (other than in ways that are not related to work ability), the Secretary must demonstrate that there is some other stated change in circumstances prior to making a determination of work ability. Work ability, or the ability of the individual to be found eligible for benefits if newly applying, will no longer be the sole standard of continuing eligibility.

While the Committee is aware that there are many difficult details to be worked out by the Secretary pertaining to the administration of the new standard, the Committee expects the type of process described below to be followed as closely as possible.

#### EXPLANATION OF CONTINUING ELIGIBILITY REVIEW PROCESS WITH MEDICAL IMPROVEMENT STANDARD

Step 1: Beneficiary is notified of review and asked to come to local social security district office for interview:

Review process explained, including role of medical improvement in the process,

Beneficiary explains current condition and how condition compares to condition at time of last review,

District office assists beneficiary in listing medical treating sources and other information on current activities (including any work),



(If, at any point during the review, the beneficiary is found to be working at substantial gainful activity, the review is ceased and benefits terminated.)<sup>1</sup>

Interviewer observes condition of beneficiary to determine if review should be ceased at this point and benefits continued.

Step 2: State agency secures and reviews medical evidence, both that provided by the claimant and secured by the Secretary. (Review may be ceased at this point and benefits continued based on the evidence in the file.)<sup>2</sup>

Step 3: If a continuance decision is not made in Step 2, the record of evidence is reviewed to establish whether the individual has medically improved and to determine whether he is disabled under the meaning of the law (i.e., can he perform substantial gainful activity?)

#### NO MEDICAL IMPROVEMENT

If the Secretary finds that there has been no medical improvement in the individual's impairment(s) (other than medical improvement which is not related to his work ability), the Secretary must determine whether any one of the following factors is met:

(a) the individual has benefited from medical or vocational therapy or technology,

(b) new or improved diagnostic or evaluative techniques indicate the individual's impairment(s) is not as disabling as believed at the time of the last decision,

(c) the prior determination was fraudulently obtained, or

(d) there is demonstrated substantial reason to believe that the prior determination was erroneous (not considering the claimant's current medical condition).

If the answer to each of these factors is no, benefits are continued (whether or not the individual would have been found to be able to engage in substantial gainful activity).

If the answer to any of these factors is yes, the Secretary then makes a determination of whether the individual can engage in substantial gainful activity.

If the Secretary determines that he can, benefits are terminated;

If the Secretary determines that he cannot, benefits are continued.

#### MEDICAL IMPROVEMENT

If the Secretary finds the evidence does not establish that the individual's impairment(s) is the same as or worse than at the time of the prior determination (disregarding medical improvement which is not related to his work ability), the Secretary determines whether the individual is able to perform substantial gainful activity.

<sup>1</sup> Review shall also be ceased and benefits terminated if the individual cannot be located, or fails, without good cause, to cooperate in the review or to follow prescribed treatment that could be expected to restore his ability to work.

<sup>2</sup> Review may be ceased and benefits continued at any point in the process that is warranted by the evidence in the file.

If the Secretary determines that he can, benefits are terminated;

If the Secretary determines that he cannot, benefits are continued.

The Committee is aware that certain beneficiaries may be unable to cooperate in a review as a result of the very nature of their impairment (mental impairment cases, for example). Current SSA operating guidelines provide that such persons be accorded special assistance and that, where appropriate, a third party—such as a family member or treating physician—become involved in the process. The Committee stresses the importance of these guidelines and urges the Secretary to exercise caution in applying the failure to cooperate exception to the medical improvement standard.

The Committee believes that the standard in this amendment is one that provides protections for beneficiaries who belong on the rolls, yet is understandable and workable—essential features for a standard that is to be uniformly applied.

Fourth, the Committee is aware that, notwithstanding the effort to create a clear standard that can be tightly administered, the complexity and the enormity of the disability determination process makes an assessment of the likely impact of the new standard most difficult. Over 1 million people with widely different disabilities apply for benefits each year and over 400,000 beneficiaries are reviewed each year to assess their continuing eligibility. These disability determinations are made by 12,000–13,000 State agency employees in some 54 States and jurisdictions under the direction and monitoring of the Secretary. Three levels of administrative appeals, then the opportunity for appeal to the Federal courts, add thousands more people to the decision-making process. How the new standard will actually be applied will be determined by the actions of all of these agents—the Secretary, the States, and the courts.

The actuarial cost estimates received by the Committee underscore the inherent uncertainty. Whereas the Social Security Administration believes the new standard will involve a substantial cost and significantly impact the rate of present-law terminations, the Congressional Budget Office estimates a much lower cost and a lesser impact on terminations.

The Committee's uncertainty about how the new standard will actually impact beneficiaries, program administration, and the trust funds has led the Committee to include a sunset on the provision—it expires on December 31, 1987. By this time, the Committee expects that over 1 million people will have been reviewed under the new standard (including 200,000–300,000 who have not yet been reviewed for the first time under the periodic review requirement), in addition to the individuals who will be eligible for redetermination under this bill. The Committee should then be in a strong position to assess the merits and workability of the new standard.

To help ensure that the Committee carefully monitor developments over the next 3 years and make a timely decision on the reauthorization of the standard, Section 18 of the Committee amendment, which tightens Federal control over State disability determinations, also expires on December 31, 1987.

*Effective date*

The effective date in the Committee amendment clearly delineates which cases are to be determined or redetermined and under the new standard. The new standard would (subject to the 3-year sunset) be applied to future determinations of continuing eligibility and to all individuals who currently have claims properly pending in the administrative appeals process. The amendment would further direct that continuing disability cases properly pending in the Courts (as of the date of Committee action) would be remanded to the Secretary for review by the Secretary under the new standard. (This amendment would also apply to new court cases which are timely filed by individuals who have completed the administrative appeals process during the period between March 15, 1984 and 60 days after enactment.) This remand procedure would apply only to individual litigants and to members of class actions identified by name.

In the case of other members of class actions, a different rule would be followed. The Secretary would be required to notify any member of a class who has, prior to the date of Committee action, been properly certified as a class member (even though not individually named) that these individuals would be allowed a period of 60 days from the date of notification to request a review of the determination that they are no longer disabled. If they make such a request within the 60 days, their case will be reviewed administratively under the new standards established by the bill. The result of that review could be further appealed under rules of appeal established by the Social Security Act and Secretary's regulations. If they fail to request such a review, however, they would lose the right of judicial review of their case—just as claimants under current law lose such rights if they fail to make timely appeals, and as unnamed members of class action litigation now lose their rights of appeal if they fail to make a timely application for the relief which is ordered under the class action.

In the case of any individual with respect to whom a continuing disability determination has become administratively final prior to the date of Committee action and who has not initiated a court action either individually or as a member of a class properly certified prior to such date, the amendment would provide that the administrative determination of the Secretary is final and conclusive and not subject to appeal. In other words, the amendment would not allow for redeterminations in the case of individuals who have failed to exercise their appeal rights and therefore have no reason to consider themselves protected by the certification of a class action. This would avoid the possibility that a future certification of one or more class actions—or even a nationwide class action might give the Committee decision much broader retrospective effect (and for higher cost) than the Committee intends.

Individuals remanded to the Secretary for review or those who request review within the allowable time limit could elect to receive payments on an interim basis pending redetermination of their eligibility under the new standard. These payments would commence with the month in which the individual requests that such payments be made. Individuals who are found eligible for ben-



efits under the new standard would receive any additional benefits that may be due for the retroactive period since their benefits were ceased. Any interim payments made to individuals found ineligible under the new standard would be subject to recovery as overpayments under the same conditions that apply to payments made under the continuation of benefits during appeal provision in existing law.

Because of the apparent complexity of the effective date provision, a detailed rationale for the Committee's action is appropriate. The Committee has determined that the legislation should establish precisely the application of the new medical improvement provisions in order to eliminate the confusion and disruption resulting from the extensive litigation now pending in the courts on medical improvement.

The plaintiffs in many of these pending suits have sought to represent a class of all present or former recipients of disability benefits who reside in a particular state or judicial circuit. The Administration has informed the Committee that there are in excess of 30 such class actions or putative class actions pending, often purporting to be brought on behalf of thousands of individual claimants. The overwhelming majority of these individual claimants are not aware that they are members of a class or putative class in a suit brought by someone else and have essentially abandoned their claims by not personally seeking judicial review. The disruptive impact of these class actions is particularly severe in those cases in which the plaintiffs have sought to represent a class that is so broadly defined as to include hundreds or thousands of claimants who either (a) did not exhaust their administrative remedies (which is a prerequisite to obtaining judicial review of the denial of their claims) or (b) previously allowed an administrative denial of their claim at some level to become final and binding because they failed to seek further administrative review or to seek judicial review of a final decision by the Appeals Council within 60-days.

A major purpose of this legislation is to resolve the current controversy over the medical improvement issue, without unnecessarily increasing the cost of the disability program by broadly applying the new standard to thousands of individuals who had effectively accepted the finding of ineligibility and abandoned their claims by not following prescribed procedures for seeking review of the denial of benefits.

Insofar as the Committee has not provided for cases that are no longer live and properly pending on the date of enactment to be reopened and reconsidered, this provision merely restates existing law that precludes judicial review of administrative denials of claims that the claimants themselves allowed to become final. *Califano v. Sanders*, 430 U.S. 99 (1977). And because the new medical improvement standard will be applied to claims that are not stale; that is, claims that are live and properly pending in the administrative appeals process or in court on the date of enactment—there will be no further litigation on the medical improvement issue in connection with those claims either. The combined effect, then, will be to eliminate all of the current litigation on the medical improvement question under existing law and to start afresh under the new statutory standard.



Whether a claim raising the question of medical improvement is properly pending on the date of enactment and therefore is subject to the new medical improvement standard in this legislation will be determined by reference to the requirements of Section 205 of the Social Security Act and the implementing procedural regulations promulgated by the Secretary.

Under the amendment, if a claimant has a determination pending before the Secretary, his claim would automatically be considered under the new statutory medical improvement standard in the course of any further administrative review. If, however, a claimant's determination is not pending before the Secretary because the claimant has not sought further administrative review within the prescribed time limits, the administrative decision denying his claim for benefits becomes final and binding and is not subject to further administrative or judicial review. *Califano v. Sanders*, 430 U.S. 99 (1977). The administrative decision denying the claim therefore would not be reopened and reconsidered under the new statutory medical improvement standard.

The amendment also provides for application of the new statutory medical improvement standard to claims properly pending in court on the date of enactment. Under Section 205(g) of the Social Security Act, a claimant may obtain judicial review only of the Secretary's "final decision" on a claim made after a hearing, and only if he seeks judicial review within 60 days of that final decision. Governing regulations in turn provide that the Secretary's "final decision" subject to judicial review is rendered only after the individual has pressed his claim for benefits through all levels of the existing administrative appeals process, including seeking review by the Appeals Council. The Supreme Court held in *Weinberger v. Salfi*, 422 U.S. 749, 764, 766 (1975), that full exhaustion of the administrative appeals process established by the Secretary's regulations is a jurisdictional prerequisite to seeking judicial review pursuant to Section 205(g) of the Social Security Act, and the Supreme Court recently reaffirmed that holding in *Heckler v. Ringer*, No. 82-1772 (May 14, 1984), slip op. 2, 3, 16. Accordingly, the only claims raising the medical improvement issue that would be "properly pending" in court under existing law on the date of enactment would be the claims of individuals who exhausted their administrative remedies through the Appeals Council stage and then sought judicial review under Section 205(g) of the Social Security Act within 60 days.

There will, however, be many thousands of individuals who may have exhausted their administrative remedies without thereafter personally seeking judicial review pursuant to Section 205(g), but who are unnamed members of a class in a suit filed as a class action or putative class action raising the medical improvement issue on behalf of all claimants in a particular state or judicial circuit. Under the amendment, if a district court has actually certified a case as a class action, the claims of all class members in such a certified class action who fully exhausted their administrative remedies on or after a date 60 days prior to the filing of the class action will be regarded as "properly pending" in court. However, to protect against the substantial increase in the cost of this legislation that could result from a rash of class certifications in present-

ly uncertified class actions prior to the enactment of this legislation, this special protection for unnamed class members applies only to class actions certified on or before May 16, 1984, the date of the Finance Committee's action on the bill.

The claims of the members of certified classes who fully exhausted their administrative remedies will not automatically be remanded to the Secretary for reconsideration under the new standard. This is because these class members have not pressed their claims in court, possibly because they had accepted the correctness of the decision, and therefore effectively abandoned them. Instead of providing for an automatic reconsideration of such cases, the amendment provides for the Secretary to send a notice to each member of the certified class informing him that if he wants to pursue his claim for benefits notwithstanding his failure to seek judicial review under Section 205(g) following the Appeals Council's denial of his claim, he must notify the Secretary within 60 days. If the class member responds within 60 days, his claim will be reconsidered under the new medical improvement standard in this legislation. If the class member does not notify the Secretary within 60 days that he wants to have his claim reconsidered under the new standard, the amendment provides that the previous Appeals Council decision denying his claim will be final and binding and will not be subject to judicial review.

A claimant who has not individually sought review of his case in a timely manner is not, however, protected under the amendment by the pendency of a class action suit in which no class has been certified prior to the date of the Committee's action. His individual claim would be barred from judicial review, unless of course the Secretary, in a particular case extended the time for seeking judicial review under her discretionary authority in Section 205(g). This would avoid the possibility that a future certification of one or more class actions—or even nationwide class action—might give the Committee decision much broader retrospective effect (and much higher costs) than the Committee intends.

The Committee's decision to bar judicial review of claims of putative members of uncertified classes (who have not individually protected their appeal rights) was based on the following considerations:

(1) In the case of uncertified class actions, it is extremely speculative as to whether and to what extent a class would ever be certified. Thus, claimants cannot have reasonably relied on the mere pendency of a class action complaint to excuse them from pursuing their rights individually.

Putative members of uncertified classes have little if any likelihood of learning about the pendency of suits which include class allegations, let alone about the details of the proposed class and the relief being sought. There is therefore no reason to believe that this group of claimants refrained from perfecting their appeals in the hope of being included in class relief. They simply abandoned their claims. To the extent individual claimants may have been misled by the pendency of a class suit, the Committee notes that the Secretary retains the discretion to extend the time to appeal or to reopen the case administratively;



(2) Members of this group have no cases in court either individually or by means of a class action. Moreover, each of them received a notice from the Secretary advising them of the time limit for seeking judicial review and they let that time lapse. Since Section 205(g) of the Act is an authorization to sue the United States, its 60-day time limit for filing suit is jurisdictional and cannot be tolled by the pendency of a class suit. *Hunt v. Schweiker*, 685 F.2d 121 (4th Cir. 1982). Since this legislation in effect causes the denial of class certification for these persons, the putative members are in the same position they would have been had the various courts merely denied certification. In either event, their abandoned claims could not be reviewed in court.

(3) The number of claimants who might ultimately be certified in the pending suits is unknown and, in the nature of things, unknowable. There is, however, no escaping the fact that the number of class members is potentially staggering. If these claimants were permitted to revive their lapsed claims, thousands of claimants who had long since abandoned their claims might seek to reopen and relitigate them under the new statute. The burden these untold thousands of cases would pose to the orderly administration of the Social Security program is unacceptable—given the lack of interest shown by these claimants in keeping their own cases alive, and the crushing load of properly perfected cases the agency is struggling to process. In addition, the cost of including this vast class of unknown persons in the new statute could add over \$1 billion to \$2 billion to the cost of the bill. The Committee cannot justify this drain on the Trust Fund for the benefit of a group of individuals who had, but chose not to exercise, opportunities for appeal.

(4) Closing out these claims in consistent with the Social Security review system, which is generally designed to provide individualized review of final decisions of the Secretary. This approach also is consistent with the overall intent of the bill to avoid retroactive application to the maximum extent possible. At the same time, however, the Committee wants to ensure that neither the courts nor the Secretary will have to struggle in the pending cases to define what the prior law in termination cases meant. Thus, if the amendment were to permit these uncertified classes to proceed under the prior law, one of the principal purposes of this legislation—to bring a halt to the acrimonious and burgeoning “medical improvement” litigation—would be defeated.

#### CONTINUATION OF PAYMENTS DURING APPEAL

(Section 3 of the committee amendment)

##### *Present law*

DI benefits are automatically payable for the month the beneficiary is notified of ineligibility and for the 2 following months. Benefits do not generally continue during appeal. Based on a Supreme Court decision, supplemental security income (SSI) payments must continue through opportunity for an evidentiary hearing.

Under a temporary provision in P.L. 97-455 (as extended by P.L. 98-118), individuals notified of a termination decision could elect to

have DI benefits and Medicare coverage continued during appeal—through the month proceeding the month of the administrative law judge (ALJ) hearing decision. These additional DI benefits are subject to recovery as overpayments if the initial termination decision is upheld. This provision expired for terminations on or after December 7, 1983. Committee amendment: The Committee amendment reauthorize payments pending appeal through the ALJ hearing for terminations prior to June 1, 1986.

The original provision authorizing payments pending appeal resulted in large part because of the lack of uniformity of decisions between the State agencies and the administrative law judges (ALJs). In the early stages of the periodic review process, States agencies were finding about 50 percent of the people reviewed ineligible for benefits, and among those who appealed to an ALJ, about 60 percent were having benefits reinstated. The provision making continued payments available to people found ineligible for DI was thus temporary in nature, based on the view that either significant administrative, or legislative reforms would be necessary to remedy this untenable situation. It is the Committee's belief that the reforms contained in this bill will reduce the need for these payments by: (1) improving the quality and accuracy of disability determinations at the first stage of decision-making, (2) enhancing the uniformity of decisions between different levels of appeal, and thereby (3) reducing the number of appeals and the rate of decisions which are being reversed by ALJ's.

#### UNIFORM STANDARDS

(Section 4 of the committee amendment)

##### *Present law*

The guidelines for making social security disability determinations are contained in regulations, social security rulings, and the Program Operating Manual System (POMS).

Regulations, or substantive rules, have the force and effect of law and are therefore binding on all levels of adjudication—state agencies, administrative law judges, the Social Security Administrations (SSA's), Appeals Council, and the Federal Courts. On a voluntary basis, SSA issues its regulations in accordance with the public notice and comment rulemaking requirements of the Administrative Procedure Act (APA). The APA requirements do not, however, apply to social security programs because of a general exception for benefit programs.

Rulings consist of interpretative policy statements issued by the Commissioner and other interpretations of law and regulations, selected decisions of the Federal courts and ALJs, and selected opinions of the General Counsel. Rulings often provide detailed elaboration of the regulations helpful for public understanding. By regulation, the rulings are binding on all levels of adjudication.

The POMS are a compilation of detailed policy instructions and step-by-step procedures for the use of State agency personnel in developing and adjudicating claims. The POMS are not binding on the Administrative Law Judges, the Appeals Council, or the Courts.



### *Committee amendment*

The Committee amendment would require the Secretary to establish by regulation uniform standards, of eligibility to be binding on all levels of adjudication in determining whether individuals are disabled under the meaning of the Social Security Act. Such regulations must be published in accordance with the rulemaking requirements of the APA (thus removing SSA's exclusion from the provisions of the APA on matters relating to the determination of disability.)

It is the Committee's goal to ensure uniform decisionmaking at all levels of the disability adjudication process through the publication of regulations under the APA. It is the intent of the Committee, however, that the Secretary be required to publish in regulations only those changes in policies and procedures that could be reasonably expected to have an impact on findings of eligibility. The Committee is particularly concerned that SSA retain the flexibility to respond quickly to changes in conditions through the issuance of other less formal vehicles including Rulings and POMS.

### *Effective date*

This provision is effective on enactment.

## MORATORIUM ON MENTAL IMPAIRMENT REVIEWS

(Section 5 of the committee amendment)

### *Present law*

Under the Disability Amendments of 1980, all DI beneficiaries with non-permanent impairments must be reviewed at least once every 3 years to assess their continuing eligibility for benefits. Individuals with permanent impairments may be reviewed less frequently. Presently, there is no distinction in the law between the rate of review for individuals with physical and mental impairments.

Under an Administration initiative (of June 7, 1983), periodic eligibility reviews have been suspended for those mental impairment cases involving functional psychotic disorders, pending a revision, arrived at in consultation with outside mental health experts, of the criteria used for determining disability.

Under a subsequent Administration action (announced April 13, 1984), all periodic eligibility reviews have been suspended temporarily.

### *Committee amendment*

The Committee amendment suspends eligibility reviews for all individuals with disabilities based on mental impairments pending a revision of the eligibility criteria. Such revisions would be made in consultation with outside mental health and vocational rehabilitation experts. Also, a redetermination of eligibility under new criteria (and reinstatement of benefits where appropriate) would be required for individuals denied benefits after enactment and prior to revision of criteria, and to those terminated from the rolls since June 7, 1983.

*Effective date*

Such revised eligibility criteria must be published as regulations within 90 days after enactment.

# QUALIFICATIONS OF MEDICAL PROFESSIONALS

(Section 6 of the committee amendment)

*Present law*

By regulation, the State review team making disability determinations must consist of a State agency medical consultant (physician) and a State agency disability examiner. Under SSA operating instructions, both must sign the disability determination.

*Committee amendment*

The Committee amendment would require that in the case of an individual seeking benefits on the basis of a mental impairment, in which a decision unfavorable to the claimant or beneficiary is being made, the Secretary must make every reasonable effort to ensure that a qualified psychiatrist or psychologist completes the medical portion of the evaluation and any assessment of residual functional capacity.

The Committee does not intend that the Secretary be considered to have made every reasonable effort to obtain the services of qualified personnel for purposes of this provision in cases where such services could clearly be obtained if compensation for those services were made available at levels which meet the prevailing norms for such services. If such a situation arises, the Committee expects the Secretary to exercise her authority to require proper administration by the States or to utilize appropriate Federal resources to assure that determinations continue to be fully carried out in mental impairment cases with qualified psychiatrists and psychologists.

The Committee is aware that this amendment—by placing emphasis on the use of mental health specialists for making disability determinations in mental impairment cases—may appear to be setting a precedent requiring specialization among the types of physicians and other qualified professionals who make determinations. Carried to the extreme, this could impede the making of timely decisions, thereby causing substantial backlogs, and significantly disrupt the effective administration of a process which requires millions of determinations each year. The merits and consequences of such specialization have not been evaluated, and warrant serious consideration. As a result, Section 14 of this bill directs the next social security advisory council to study and make recommendations on this issue.

*Effective date*

This provision is effective for determinations made on or after date of enactment.

## NONACQUIESCENCE TO CIRCUIT COURT DECISIONS AFFECTING POLICY

(Section 7 of the committee amendment)

*Present law*

The Social Security Administration (SSA) abides by all final judgments of Federal courts with respect to the individuals in particular suits, but does not consider itself bound to implement the policy approach embodied in such decisions with respect to nonlitigants. In the infrequent case that a circuit court decision is contrary to the Secretary's interpretation of the Social Security Act and regulations, SSA may at times issue a ruling of nonacquiescence stating it will not adopt the court's decision as agency policy. There are now 8 rulings of nonacquiescence.

*Committee amendment*

In the case of U.S. Court of Appeals decisions affecting the Social Security Act or regulations, the Committee amendment would require the Secretary to send to the Committees on Finance and Ways and Means, and publish in the Federal Register, a statement of the Secretary's decision to acquiesce or not acquiesce in such court decision, and the specific facts and reasons in support of the Secretary's decision. In cases where the Secretary is acquiescing, the reporting requirement would apply only to significant decisions.

The Secretary would make these reports within 90 days after the issuance of the court decision or the last day available for filing an appeal, whichever is later.

The Committee is aware that a dispute exists as to the right of the Secretary to not acquiesce in circuit court decisions. While the Committee is concerned that a policy of mandatory acquiescence would be difficult to reconcile with the long standing Congressional importance attached to national uniformity, this legislation does not attempt to resolve that issue. Those who argue that the Secretary has no such right frequently cite the case of *Marbury v. Madison* in support of their contention that the Secretary's position violates the principle that the courts may interpret the laws. On the other hand, the Committee received testimony from the Department of Justice that the ability to not acquiesce is an important element of the Government's ability to pursue litigation in an orderly manner. Accordingly, the implications of changing this practice range widely beyond the Social Security Act. In its testimony, the Justice Department cited a recent case, *United States v. Mendoza* in which the Supreme Court upheld the Government position in an issue closely related to nonacquiescence. Clearly, if a constitutional issue is involved, it cannot be settled in this legislation and must be left for ultimate resolution by the Supreme Court. For this reason, the Committee bill provides that "nothing in this section shall be interpreted as sanctioning any decision of the Secretary not to acquiesce in the decision of a U.S. Court of Appeals."

*Effective date*

For U.S. Court of Appeals decisions rendered on or after date of enactment.



## MULTIPLE IMPAIRMENTS

(Section 8 of the committee amendment)

*Present law*

In determining whether an individual is disabled, a sequential evaluation is followed: current work activity, duration and severity of impairment, residual functional capacity, and vocational factors are considered in that order. Medical considerations alone can justify a finding of ineligibility where the impairment(s) is not severe. An impairment is nonsevere if it does not significantly limit the individual's physical or mental capacity to perform basic work-related functions.

By regulation, the combined effects of unrelated impairments are considered only if all are severe (and expected to last 12 months). As elaborated in rulings, "inasmuch as a nonsevere impairment is one which does not significantly limit basic work-related functions, neither will a combination of two or more such impairments significantly restrict the basic work-related functions needed to do most jobs."

*Committee amendment*

In determining the medical severity of an individual's impairment, the Secretary would be required under the Committee amendment to consider the combined effect of all of the individual's impairments without regard to whether any one impairment itself would be considered severe.

It is the expectation of the Committee that in most cases, multiple nonsevere impairments do not have a cumulative severe impact. The Committee is concerned, however, that the disability evaluation process accommodate those circumstances in which an individual has multiple impairments, the severely limiting effect of which is not reflected in any one of them.

In adopting this amendment, the Committee wishes to emphasize that the new rule is to be applied in accordance with the existing sequential evaluation process and is not to be interpreted as authorizing a departure from that process. As the Committee stated in its report on the 1967 amendments, an individual is to be considered eligible "only if it is shown that he has a severe medically determinable physical or mental impairment or impairments." The amendment requires the Secretary to determine first, on a strictly medical basis and without regard to vocational factors, whether the individual's impairments, considered in combination, are medically severe. If they are not, the claim must be disallowed. Of course, if the Secretary does find a medically severe combination of impairments, the combined impact of the impairments would also be considered during the remaining stages of the sequential evaluation process.

*Effective date*

For determinations made on or after January 1, 1985.



## EVALUATION OF PAIN

(Section 9 of the committee amendment)

*Present law*

Under the law, an individual's disability (whether mental or physical) must be medically determinable, expected to end in death or last for 12 continuous months, and must prevent any substantial gainful activity. There is no specific statement in the law as to how pain is to be evaluated. The law does provide that eligibility must be based on "an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques."

SSA's policy on how pain is to be evaluated is contained in regulations which were issued in August 1980. By regulation, symptoms of impairments, such as pain, cannot alone be evidence of disability. There must be medical signs or other findings which show there is a medical condition that could "reasonably be expected" to produce those symptoms.

*Committee amendment*

The determination of whether an individual is eligible for social security disability benefits can often involve difficult evaluations of medical and vocational evidence. The Congress has provided general policy guidance to the administration indicating the clear intent that benefits be provided only to those who have severe medical conditions which preclude their engaging in substantial gainful activity. To assure the integrity of the program, Congress has also specifically indicated that eligibility must be based on verifiable and objective medical evidence. Further the Congress has indicated that it attaches high importance to the administration of the disability program with a high degree of national uniformity. To carry out these general policies in the day to day administration of the program, the Congress necessarily relies upon the Administration to undertake on a continuing basis a careful evaluation of the state of medical art and, through regulations and other guidelines, to apply criteria and evidentiary rules which are consistent with them.

It has come to the attention of the Committee, that there are a number of outstanding court cases which are challenging the current policies of the Administration concerning the weight to be attached to claimant's subjective allegations concerning pain and other symptoms. The Committee questioned representatives of the Administration of this matter during its consideration of the legislation and understands that the Administration has been, on a continuing basis, consulting some of the best available medical experts on the extent to which subjective allegations of this type can be verified. At this time, the Administration has found that the weight of opinion does not justify a departure from present practice as being consistent with the program principles enunciated by the Congress.

The Committee is always reluctant to statutorily codify detailed eligibility criteria which are more properly promulgated by regulations. Such regulations should receive appropriate deference from

the courts. However, if courts ignore the Secretary's regulatory authority and the expressed Congressional concerns for careful administration, national uniformity, and verifiable evidence, the Committee has little choice but to draw the statute as narrowly as possible. For this reason, the Committee has included in the statutory rules for determining disability a specific rule for evaluating subjective allegations of pain. It is the clear intention of the Committee that this rule should be seen as a codification of the regulations and policies currently followed by the Administration. This rule prohibits basing eligibility for benefits solely on subjective allegations of pain (or other symptoms). There must be evidence of an underlying medical condition and (1) there must be objective medical evidence to confirm the severity of the alleged pain arising from that condition or (2) the objectively determined medical condition must be of a severity which can reasonably be expected to give rise to the alleged pain.

The Committee recognizes that this is an area involving difficult medical questions to which complete answers may not be available. For this reason, the Committee is recommending a high-level study to be conducted over the next two years by a panel of at least 12 experts to be appointed by the Secretary of Health and Human Services. This body is to include in its membership significant representation from the field of medicine who are involved in the study of pain along with representation from other appropriate fields including law and administration. This panel is to be appointed within 60 days of enactment and is to report to the Committee on Finance and the Committee on Ways and Means no later than December 31, 1986.

The Committee anticipates that the results of this study will help clarify this issue. If necessary, the Committee will be ready to consider further legislation which may be appropriate in the light of the study. In any event, the Committee amendment would cease to be a part of the statute after December 31, 1987. Since the provision simply codifies existing practice, the termination of the provision would not modify the rules governing the program, but it would fully restore the Administration's current degree of flexibility to implement regulatory changes which might then appear appropriate. Any such changes would, of course, have to be consistent with the policy guidance contained in the law and its legislative history.

#### MODIFICATION OF RECONSIDERATION AND PREREVIEW NOTICE

(Section 10 of the committee amendment)

##### *Present law*

A person whose initial claim for disability benefits is denied or who is determined after review to be no longer disabled, may request a reconsideration of that decision within 60 days. In the past, reconsideration has been a paper review of the evidentiary record, including any new evidence submitted by the claimant, conducted by the State agency.

Under a provision of P.L. 97-455, enacted January 12, 1983, disability beneficiaries found ineligible for benefits must be given op-

portunity for a face-to-face evidentiary hearing at reconsideration. Such hearings may be provided by the State agency or by the Secretary.

### *Committee amendment*

The committee amendment would require the Secretary to notify individuals upon initiating a periodic eligibility review that such review could result in termination of benefits and that medical evidence may be submitted.

In addition, the Secretary would be required to conduct demonstration projects in at least 5 States in which the opportunity for personal appearance is provided prior to determination of ineligibility (in lieu of face-to-face hearing at reconsideration). This would apply to periodic review cases only. A report would be due to Congress by April 1, 1986.

The Committee is aware that one of the reasons for the difference in decisions made by State agencies and administrative law judges (and the high rate at which administrative law judges reverse termination decisions) is the fact that the hearing decision involves face-to-face contact between the claimant or beneficiary and the decision-maker. Whether or not those decisions made with personal appearance contact are more accurate, given the inherent subjectivity that may be introduced, has not been established.

This provision would, on a demonstration basis, permit the opportunity for face-to-face appearance prior to the State agency making a decision to terminate benefits. The Committee has made a decision not to mandate this change for all denial decisions or all termination decisions in recognition of the need for caution in this area. Procedural changes such as these, particularly when coupled with the many reforms in this bill, can have significant and unforeseen consequences on the administration of the program and the rate of allowances.

This provision will complement the legislation enacted in 1983 (P.L. 97-455) which requires that face-to-face evidentiary hearings be provided at the reconsideration hearing level for all terminated beneficiaries.

### *Effective date*

As soon as practicable after date of enactment.

### CONSULTATIVE EXAMS/MEDICAL EVIDENCE

(Section 11 of the committee amendment)

### *Present law:*

Consultative exams are medical exams purchased by the State agency from physicians outside the agency. By regulation, consultative examinations may be sought to secure additional information necessary to make a disability determination or to check conflicting information. Evidence so obtained is to be considered in conjunction with all other medical and nonmedical evidence submitted in connection with a disability claim.



*Committee amendment:*

The Committee amendment requires the Secretary to make every reasonable effort to obtain necessary medical evidence from the individual's treating physician prior to seeking a consultation examination. In proposing this amendment, it is the Committee's purpose to underscore the importance of obtaining evidence from the claimant's or beneficiary's physician who is likely to be the medical professional most able to provide a detailed, longitudinal picture of the individual's medical condition.

The Committee does not intend to alter in any way the relative weight which the Secretary places on reports received from treating physicians and from consultative examinations. Nor is it intended that the Secretary shall be precluded from obtaining consultative examinations when the Secretary finds it necessary to secure additional information or to resolve conflicting evidence.

The Committee amendment would also require the Secretary to develop a complete medical history for individuals applying for benefits or undergoing review over at least the preceding 12 month period. However, in cases involving applications for disability benefits where the claimant alleges that the disability began less than 12 months prior to his application, obtaining a medical history of at least 12 months may be unnecessary.

*Effective date*

These provisions are effective for determinations made on or after the date of enactment.

## VOCATIONAL REHABILITATION

(Section 12 of the committee amendment)

*Present law*

Presently, States are reimbursed for VR services provided to DI beneficiaries which result in their performance of substantial gainful activity (SGA) for at least 9 months. For such individuals, services are reimbursable for as long as they are in VR and receiving cash benefits. If the individual is reviewed and found to have medically recovered while in VR, cash benefits may continue (under Section 225(b) of the Social Security Act, a work incentive provision enacted in 1980) but VR services may not be reimbursable since the individual's ability to engage in SGA is attributable to medical improvement rather than rehabilitation.

*Committee amendment*

The committee amendment authorizes reimbursement for VR services provided to individuals who have medically recovered but are receiving disability benefits under Section 225(b). Reimbursable services would be those provided prior to his or her working at SGA for 9 months, or prior to the month benefit entitlement ends, whichever is earlier.

*Effective date*

On enactment.



SPECIAL BENEFITS FOR INDIVIDUALS WHO PERFORM SUBSTANTIAL  
GAINFUL ACTIVITY DESPITE SEVERE MEDICAL IMPAIRMENTS

(Section 13 of the committee amendment)

*Present law*

Under the SSI program, an individual who is able to engage in substantial gainful activity (SGA) cannot become eligible for SSI disability payments. Prior to the enactment of a provision in 1980, a disabled SSI recipient generally ceased to be eligible for SSI when his or her earnings exceeded the level which demonstrates SGA—\$300 monthly.

Under Section 1619 of the Social Security Act, enacted in the Disability Amendments of 1980, SSI recipients who have seven medical impairment and who work and earn more than SGA (\$300 monthly) cease to be eligible for SSI as such, but may receive a special payment and maintain medicaid coverage and social services. The amount of the special payment is equal to the SSI benefit they would have been entitled to receive under the regular SSI program were it not for the SGA eligibility cut-off. Special benefit status is thus terminated when the individual's earnings exceed the amount which would cause the Federal SSI payment to be reduced to zero (i.e., when countable monthly earnings exceed \$713). Medicaid and social services may continue, however.

Section 1619 expired on December 31, 1983. It is being continued administratively, however, during 1984 under general demonstration project authority.

*Committee amendment*

The Committee amendment reauthorizes Section 1619 through June 30, 1987. In addition, the Secretaries of HHS and Education are required to establish training programs on Section 1619 for staff personnel in SSA district offices and State VR agencies, and disseminate information to SSI applicants, recipients, and potentially interested public and private organizations.

This provision will supersede the Secretary's one-year extension of Section 1619.

ADVISORY COUNCIL

(Section 14 of the committee amendment)

*Present law*

Section 706 of the Social Security Act provides for the appointment of a 13-member quadrennial advisory council on social security. It is responsible for studying all aspects of the social security and medicare programs. Each council is to be comprised of representatives of employee and employer organizations, the self-employed, and the general public.

The next advisory council is scheduled to be appointed in 1985 and to make its final report by December 31, 1986.

### *Committee amendment*

The Committee amendment directs the next quadrennial advisory council to study and make recommendations on various medical and vocational aspects of disability, including the alternative approaches to work evaluation for SSI recipients, the effectiveness of vocational rehabilitation programs for DI and SSI recipients, and the question of using medical specialists for completing medical and vocational forms used by State agencies. The council would be authorized to convene task forces of experts to deal with specialized areas.

Members of the Council must be appointed by June 1, 1985.

### FREQUENCY OF PERIODIC REVIEWS

(Section 15 of the committee amendment)

#### *Present law*

Under a provision enacted in 1980, all DI beneficiaries, except those with permanent impairments, must generally be reviewed to assess their continuing eligibility at least once every 3 years.

Under a provision enacted in 1983 (P.L. 97-455), the Secretary is provided the authority to waive this 3-year review requirement on a state-by-state basis. The appropriate number of cases for review is to be based on the backlog of pending cases, the number of applications for benefits, and staffing levels.

On April 13, 1984, Secretary Heckler announced a temporary, nationwide moratorium on periodic eligibility reviews.

#### *Committee amendment*

The Committee amendment requires the Secretary to issue final regulations, within 6 months of enactment, establishing the standards to be used in determining the frequency of periodic eligibility reviews. Pending issuance of such regulations, no individual can be reviewed more than once.

In proposing this amendment, the Committee does not in any way intend to suggest that the Secretary is being granted authority to waive or modify the present-law requirements pertaining to the periodic review of all DI beneficiaries. Regular eligibility reviews are mandated by law.

Situations have arisen, however, which are of concern to the Committee and which could be clarified through the issuance of such a regulation. For example, it is not the intention of the Committee that individuals who are found eligible for benefits after a lengthy administrative appeal find themselves subjected to a second eligibility review after only a relatively brief period. Conversely, with the number of people now classified administratively as being permanently impaired approaching 40 percent of the disabled-worker benefit rolls, the Committee is concerned that the responsibility to assess the continuing eligibility of such beneficiaries not be neglected. A failure to periodically review eligibility in these cases could seriously undermine the intent of the 1980 legislation. Finally, there are individuals who are medically diagnosed and expected to recover in less than 3 years. For these individuals, reviews should be scheduled accordingly.

## MONITORING OF REPRESENTATIVE PAYEES

(Section 16 of the Committee Amendment)

*Present law*

The Social Security Act permits the Secretary of Health and Human Services to appoint a representative payee for an individual entitled to social security or supplemental security income (SSI) benefits when it appears to be in the individual's best interest. Payees must be appointed for individuals receiving SSI based on drug or alcohol addictions.

The Social Security Act defines penalties for misuse by payees of social security and SSI payments, but places no requirements or restrictions on the selection and monitoring of payees.

A payee convicted of misusing a social security beneficiary's funds is guilty of a felony, punishable by imprisonment for not more than 5 years and/or a fine of not more than \$5,000. A payee convicted of misusing an SSI recipient's funds is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year and/or a fine of not more than \$1,000.

Prior to 1978, all payees except parents or spouses with custody, legal guardians and State and Federal institutions were required to account annually. Systematic accounting procedures for these payees were suspended as a work-saving measure between 1978 and March 1984. (However, State institutions are subject to an on-site accounting process at least every 3 years and this process has not been suspended.) In March 1983, a Federal district court ordered the Social Security Administration (SSA) to institute a system of periodic mandatory payee accounting within 1 year *Jordan v. Heckler*. In March 1984, SSA implemented an accounting system under which a random sample of 10 percent of all payees are required to account annually. At the request of the plaintiff, the court subsequently revised its order in *Jordan* so as to require an annual accounting from all payees.

*Committee amendment*

The entitlement of retirees, survivors, and the disabled to social security benefits is an important element in the economic security of often vulnerable individuals. When the Social Security Administration finds that such individuals cannot manage their own funds, it has a serious obligation to exercise caution in selecting an alternate payee and to undertake reasonable efforts to assure proper use of and accountability for the benefits disbursed to that payee. The Committee amendment would establish a statutory base for that obligation of the agency. At the same time, the Committee amendment recognizes that it is neither necessary nor appropriate to require governmental supervision or detailed accounting in the case of close familial relationships (parent and child or spouses living together) absent some allegation or overt reason to suspect the possibility of misuse of funds.

More specifically, the amendment would require the Secretary to: (1) evaluate the qualifications of prospective payees either prior to or within 45 days following certification, (2) establish a system of annual accountability monitoring for cases in which payments are



made to someone other than the entitled individual, or parent or spouse living in the same household, (3) establish a system whereby parent and spouse payees who live in the same household as the entitled beneficiary would periodically verify that they continue to live with the beneficiary, and (4) increase the penalties for misuse of benefits by representative payees. (The amendment also permits the Secretary to establish an accounting system for State institutions which serve as payees.)

The fine for a first offense by a payee convicted of misusing SSI benefits would be increased to not more than \$5,000 and, for both programs, a second offense by a payee would be made a felony punishable by imprisonment for not more than 5 years and/or a fine of not more than \$25,000. Individuals convicted of a felony under either program may not be selected as a representative payee.

Finally the Secretary would be required to report to Congress within 6 months of enactment on the implementation of the new system, and also to report to Congress annually on the number of cases of misused funds, and the disposition of such cases.

#### *Effective date*

On enactment.

### FAIL-SAFE FINANCING

(Section 17 of the Committee amendment)

#### *Present law*

Under permanent law, each social security trust fund is intended to have sufficient resources to meet its full benefit obligations. The main source of funding for the Disability Insurance Trust Fund is that portion of the social security tax allocated for disability. At present, the disability part of the tax is 1 percent of taxable payroll (employee and employer combined). It is scheduled to rise to 1.2 percent in 1990 and to 1.42 percent in 2000 and thereafter. Temporary legislation enacted in 1983 also allows for borrowing among the trust funds in view of the relatively low balances in the cash benefits funds at the present time. This authority expires, however, in 1988. Present law does not contain any authority for making benefit payments in the event the social security trust funds should prove to have inadequate resources.

#### *Committee amendment*

The Committee believes that the social security disability insurance program provides important protections to American workers and their families against the threat of income loss should they suffer disabling medical conditions which prevent them from engaging in substantial gainful employment. The cost of this program is significant, and it is considerably higher than originally estimated. Nevertheless, the Committee believes that those who support this program through social security payroll taxes are willing to bear those costs provided that they can have confidence that the program will be carefully administered that that its benefits will be limited to the intended, eligible population.



The Committee views the present bill as an important measure to restore order and confidence to the disability program. It does have significant short-term costs, but if current estimates are correct it should not seriously affect the long-range stability of the disability program or of the social security funds generally. The Committee is, however, aware that the disability program has shown considerable volatility, and there is the unfortunate possibility that the pending legislation could be misinterpreted as a signal of Congressional intent for looser program administration. Should that happen, the costs of the program might escalate rapidly. Such a development is neither anticipated nor desired by the Committee.

To assure that taxpayers and beneficiaries may have confidence in the continuing fiscal integrity of the program, the Committee amendment includes a fail-safe provision. This provision will put those who administer the program at the Federal and State level, and the courts, on notice that there is not an open-ended commitment of taxpayer funds to underwrite rapidly expanding costs which might follow from lax administration or overbroad construction of the law. At the same time, the provision will serve to prevent a situation in which the fund might be rapidly depleted to the extent of placing the continuing regular payment of basic benefits in doubt.

Specifically, the fail-safe provision in the Committee amendment would operate as follows. If the disability fund is projected to decline to less than 20 percent of a year's benefits as of the start of any year, the Secretary would be required to notify the Congress by the preceding July 1. If Congress took no other action, the Secretary would scale back (in part or in full) the next cost-of-living increase for disability beneficiaries as necessary to keep the fund balance at 20 percent. If necessary, the Secretary also would scale back the increase in the benefit formula used for determining benefit levels for persons newly awarded disability benefits. In making the determination under this provision, the Secretary would be required to consider actual assets properly owned by the DI trust fund. Thus, the fund would get full credit for the approximately \$5 billion which it has temporarily loaned to the OASI fund under the interim interfund borrowing arrangements. With these assets, it is now projected that the DI fund would not dip below the 20 percent level until well into the next century.

The fail-safe provision in the Committee amendment is generally similar to a fail-safe provision for the OASI and DI programs combined which the Committee recommended and the Senate approved as part of the 1983 amendments. That provision, however, was not included in the conference agreement on that legislation.

### *Effective date*

On enactment.

## MEASURES TO IMPROVE COMPLIANCE WITH FEDERAL LAW

## (Section 18 of the Committee Amendment)

*Present law*

Since 1956, when the Disability Insurance program was enacted, the States have been responsible, on a voluntary and reimbursable basis, for determining whether individuals are disabled under the meaning of the law. Under the law, States administering the program are required to make disability determinations in accord with Federal law and the standards and guidelines established by the Federal Department of Health and Human Services. The program is 100 percent Federally financed, with all benefit costs as well as all of the administrative costs incurred by the States either directly financed or reimbursed by the Federal government.

The law provides for the Secretary to commence actions to take over the disability determination process of a State fails to follow Federal rules. However, the law includes a large number of procedural steps which must be complied with before such a Federal assumption can be accomplished. The Secretary may not commence making disability determinations earlier than 6 months after: (1) finding, after notice and opportunity for hearing, that a State agency is substantially out of compliance with Federal law; (2) developing all procedures to implement a plan for partial or complete assumption of the disability determinations which grant hiring preference to the State employees; and (3) the Secretary of Labor determines that the State has made fair and equitable arrangements to protect the interests of displaced employees.

*Committee amendment*

Since States bear no part of either administrative or benefit costs of the program, there has always been an inherent risk that determinations might not be made with the best interests of the program in mind. States could take the view that they are acting against their own interest to the extent that they deny wholly Federal benefits to their citizens, especially since this may in some instances result in added State costs under general assistance or other programs. Until recently there was no indication that State governments were attempting to influence the disability determination process in a manner which departed from Federal law and regulations concerning standards of eligibility. As a practical matter, however, a 1976 review by the General Accounting Office found that the State agency system resulted in too little national uniformity of decisionmaking and recommended increased efforts by the Social Security Administration to control the process. A follow-up GAO study in 1978 found the situation not improved and recommended the development of a plan to bring the system under complete Federal management.

Recently States have begun to directly challenge the authority of the Federal government to prescribe the standards to be applied in determining eligibility. Numerous States have either refused to conduct reviews under the standards prescribed by the Secretary or have conducted the reviews under a medical improvement standard contrary to the Secretary's authoritative interpretation of the law.

In some cases, such actions were based on court orders but in several instances (10 States, as of March 1984), the action was taken solely on the authority of the Governor. In hearings before other committees Governors have given some indication that they may be prepared to challenge Federal authority in areas other than medical improvement. Thus far, the Department has taken no action to require States to resume following Federal standards.

The Committee recognizes that the traditional cooperative arrangements between the States and the Federal government have been beneficial to the program and hopes that those arrangements can continue. On the other hand, the sole Federal responsibility for the funding of the program, the necessity of having a uniform national program, and the national importance of maintaining the integrity of the Social Security Trust Funds necessitate that the Congress and the Administration remain fully in control of and accountable for the policies applicable to the Social Security Act disability programs. A situation in which individual States begin tailoring those policies or selectively applying them cannot be tolerated.

The 1980 amendments properly sought to assure that any transition from State to Federal administration is done on an orderly basis and with due concern for the legitimate interests of affected employees. However, such procedural concerns cannot take precedence over the need to assure the continuing application of uniform Federal rules and standards to the disability determination process. For this reason, the Committee amendment would modify the provisions of law dealing with State determination of disability to assure better Federal monitoring of the situation and to require the Secretary to take prompt and effective action to deal with any future situations in which States refuse to follow Federal rules or to apply Federal standards of eligibility. The Secretary would be required to federalize disability determinations in a State within 6 months of finding that such State is failing to follow Federal law and standards.

Specifically, when the Secretary has reason to believe that a State is not following Federal law and standards, the matter must be promptly investigated and a preliminary finding must be made within 3 weeks. If the preliminary finding indicates that the State is out of compliance, the Secretary must immediately notify the State and request a response agreeing to follow Federal standards. If a satisfactory response is received within 21 days of the preliminary finding, the Secretary would simply monitor the situation over the next 30 days to determine that the State is, in fact, in compliance. If a satisfactory response has not been received by that deadline or if the State does not perform in accordance with such a response, the Secretary would be required to make a final finding. This finding would be made no later than 60 days after the preliminary finding, except that an additional 30 days would be allowed if the state requests and the Secretary, in her discretion grants, a hearing before the Secretary on the issue. The Secretary's decision on the matter would not be subject to appeal.

If the Secretary finds that the State is unwilling or unable to follow Federal guidelines in determining disability, the Secretary would be required to federalize the disability determination process



in that State as quickly as possible using SSA personnel or other means of administration available to the Federal government. To the extent feasible, the Secretary would attempt to meet the requirements of existing law which are designed to provide for an orderly transfer of functions, but in no event could the full Federalization take place more than 6 months after the final finding. Moreover, even during that 6 months the Secretary would be required to take such steps as may be necessary to assure that the final decision on all claims processed by that State was made in accordance with Federal standards of eligibility. This might require a Federal re-review of all claims or of those claims involving particular issues with respect to which the State was out of compliance. This provision expires on December 31, 1987.

## V. BUDGETARY IMPACT OF THE BILL

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, sections 308 and 403 of the Congressional Budget Act of 1974, and paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the committee states that the estimates of the Administration and the CBO are as follows:

[Memorandum, May 18, 1984]

From: Eli N. Donkar, Office of the Actuary

Subject: Estimated Additional OASDI Benefit Payments Under S. 476 as Reported by the Senate Committee on Finance

The attached table presents the estimated additional OASDI benefit payments that would result from the proposed disability amendments contained in S. 476 as reported by the Senate Committee on Finance on May 16, 1984. The estimates are based on the alternative II-B assumptions of the 1984 Trustees Report. In this respect, the basic program assumptions underlying these estimates are the same as those used for my memorandum dated May 4, 1984, showing similar estimates for earlier versions of these proposals. In particular, these estimates do not reflect the effects of the national moratorium on periodic reviews announced April 13, 1984 by Secretary Heckler.

The final Committee bill represents a combination of provisions contained in the two packages of proposals described in my earlier memorandum. In addition, S. 476 contains three new sections that provide for (1) closer monitoring of cases where benefits are sent to representative payees, (2) improved State compliance with Federal law and standards established for the disability determination process, and (3) a mechanism to automatically restrict the level of annual cost-of-living benefit increases to DI beneficiaries if DI Trust Fund assets fall below 20 percent of annual DI outlays.

The attached table indicates that there are two key provisions with respect to costs attributable to the bill under this set of assumptions. The first of these, contained in section 2, would temporarily institute a revised procedure for the determination of continuing disability eligibility. The revised procedure would include a modified "medical improvement" standard, whereby an individual's disability benefits could generally not be terminated if the individual could demonstrate that his condition had not medically



improved since a previous determination of disability had been made.

The bill provides for the expiration of this new procedure at the end of calendar year 1987. The committee has indicated its intention to review the experience under the revised procedure, with the possibility that the medical improvement standard could be extended beyond its legislated expiration date. The current estimates, however, only reflect the costs resulting from the effect of the medical improvement standard during the period ending in 1987.

Previous estimates have included a range of examples with respect to the possible retrospective application of a medical improvement standard. However, the current bill includes specific language with respect to the application of this provision; it would apply to new decisions after enactment and to certain cases in the appeals "pipeline" as of the date of committee action on the bill.

The "pipeline" is defined in the bill to include those cases that (1) have not yet had a final decision of the Secretary, (2) cases covered under individual Federal court appeals, and (3) other cases covered under class action suits where the class was certified by the date of committee action. Therefore, the attached estimates for the current bill include only one set of costs for the medical improvement standard.

The second provision with a significant cost is section 3 which would provide for the continuation of benefits during the appeal of a medical cessation. Benefits could continue on appeal through the Administrative Law Judge decision in cases where the initial cessation was issued before June 1986. Furthermore, no payments would be made under this provision for months after January 1987.

It should be noted that a third section of the bill has the potential for a significant impact on DI Trust Fund outlays, although under the alternative II-B assumptions it would have no effect. Section 17 provides for the automatic adjustment of benefit increases otherwise applied to benefits paid from the DI Trust Fund. Under that provision, DI benefit increases would be reduced if a specified DI "trust fund ratio" is estimated to decline below a 20-percent "trigger level." Benefits payable to new beneficiaries joining the rolls might also be affected, if required to maintain a 20-percent level of trust fund assets. Under the alternative II-B assumptions, this trust fund ratio is estimated to stay above 30 percent during the projection period 1984-89. Therefore, the cited provision would not result in benefit reductions.

Under more adverse conditions, however, such as those contained in the 1984 Trustees Report alternative III assumptions, the corresponding ratios are estimated to fall below the "trigger level" beginning in 1988. Consequently, under that set of assumptions, this provision would result in reduced benefit increases for DI beneficiaries beginning in December 1986.

The average OASDI cost over the long range (1984-2058) is estimated to be less than 0.005 percent of taxable payroll, for each section of the bill separately and for the total cost of all sections combined.

Attachment.

# ESTIMATED ADDITIONAL OASDI BENEFIT PAYMENTS UNDER S. 476 AS REPORTED BY THE SENATE COMMITTEE ON FINANCE

[In millions]

Section	Proposal	Fiscal year—						Total 1984-87
		1984	1985	1986	1987	1988	1989	
2	Revised CDR procedure, including medical improvement standard <sup>1</sup> .....	\$150	\$440	\$400	\$410	\$400	\$250	\$2,050
3	Continuation of benefits during appeal (through ALJ for initial cessations before June 1986) .....	60	130	110	60	50	40	450
4	Uniform standards for disability determinations .....	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )
5	Moratorium and revised criteria for mental impairment cases .....	( <sup>3</sup> )	( <sup>3</sup> )	( <sup>3</sup> )	( <sup>3</sup> )	( <sup>3</sup> )	( <sup>3</sup> )	( <sup>3</sup> )
6	Qualifications of certain medical professionals .....	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	10	10	20	40
7	Compliance with certain court orders .....							
8	Multiple impairments .....		( <sup>2</sup> )	( <sup>3</sup> )	10	10	20	40
9	Study on evaluation of pain .....	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )
10	Modification of reconsideration prereview notice .....	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )
11	Case development and medical evidence .....							
12	Payment of costs of rehabilitation services .....	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )
14	Advisory council .....							
15	Regulations on frequency of reviews .....	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )
16	Monitoring of representative payees .....	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )
17	"Fail-safe" reduction of automatic benefit increases for DI beneficiaries .....	( <sup>4</sup> )	( <sup>4</sup> )	( <sup>4</sup> )	( <sup>4</sup> )	( <sup>4</sup> )	( <sup>4</sup> )	( <sup>4</sup> )
18	Measures to improve State compliance with Federal law and standards for the disability determination process ..	( <sup>5</sup> )	( <sup>5</sup> )	( <sup>5</sup> )	( <sup>5</sup> )	( <sup>5</sup> )	( <sup>5</sup> )	( <sup>5</sup> )
Total for bill <sup>6</sup> .....		260	460	480	480	460	320	2,460

<sup>1</sup> See covering memorandum concerning which groups would be subject to the new procedure.<sup>2</sup> Cost or savings less than \$5 million.<sup>3</sup> No cost is shown for this provision since existing Administration initiatives are expected to accomplish the same results under present law.<sup>4</sup> No cost is shown for this provision since, under this set of assumptions, the appropriate DI trust fund ratio does not fall below the 20-percent "trigger level" in this period.<sup>5</sup> No cost is shown for this provision since estimates assume that any noncompliance of States would end upon enactment of a medical improvement standard for continuing disability reviews.<sup>6</sup> Include \$90 million due to continuation of benefits during appeal for past CDR terminations which would be reopened and evaluated under the new medical improvement standard but which would not be reinstated.**Notes:**

(1) The above estimates do not reflect the effects of the national moratorium on periodic review cases announced on Apr. 13, 1984, by Secretary Heckler. See memorandum dated Apr. 24, 1984, by Eli N. Donker for a discussion of this issue.

(2) Estimates shown for each section alone exclude the effects of interaction with other proposals. Total costs for bill reflect such interactions.

(3) Due to the uncertainty concerning the effects of many of these proposals, actual experience could vary substantially from these estimates.

(4) Estimates are based on the 1984 trustees report alternative II-8 assumptions.

Source: Social Security Administration, Office of the Actuary, May 18, 1984.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, D.C., May 18, 1984.

Hon. ROBERT DOLE,  
Chairman, Committee on Finance,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed the provisions of S. 476, the Social Security Disability Amendments of 1984, as ordered reported by the Senate Committee on Finance on May 18, 1984. We have not received a copy of this bill. The attached cost estimate is based on committee documents, and on conversations with committee staff.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 476.
2. Bill title: Social Security Disability Amendments of 1984.
3. Bill status: As ordered reported by the Senate Committee on Finance, May 18, 1984.
4. Bill purpose: To amend Title II of the Social Security Act to provide for reform of the disability determination process.
5. Estimated cost to the Federal Government: The following table shows the estimated costs of this bill to the federal government. These estimates assume an effective date retroactive to May 1, 1984, unless otherwise noted. The estimate was prepared without a draft of the bill. Estimates were prepared based on committee documents and on conversations with committee staff.

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF S. 476

[By fiscal year, in millions of dollars]

	1984	1985	1986	1987	1988	1989
Budget function:						
Function 550: <sup>1</sup>						
Budget authority.....	3	10	12	11	5	6
Estimated outlays.....	3	10	12	11	5	6
Function 570:						
Budget authority.....	1	28	19	8	13	6
Estimated outlays.....	7	73	55	42	43	30
Function 650:						
Budget authority.....	-1	-14	-31	-45	-55	-67
Estimated outlays.....	46	220	225	127	136	121
Function 600: <sup>1</sup>						
Budget authority.....	1	5	8	10	8	11
Estimated outlays.....	1	5	8	10	8	11
Total costs or savings:						
Budget authority.....	4	29	8	-16	-29	-44
Estimated outlays.....	57	308	300	190	192	168

<sup>1</sup> Funding for entitlements that requires further appropriations action.

## BASIS FOR ESTIMATE

This bill would change the disability process for those individuals who undergo continuing disability reviews (CDR's) and for those who apply for Disability Insurance (DI) and Supplemental Security Income (SSI) benefits. Historically, continuing disability reviews have been performed on medical diaried cases—these cases which the Social Security administration (SSA) evaluates as having some chance of medical improvement within a specific length of time. In 1981, SSA began an intensified process of periodically reviewing all cases on the rolls not considered permanently disabled.

It is difficult to project the costs of the provisions in this bill for several reasons. First, there are little data available on the characteristics of the people who have been terminated from the DI rolls as a result of the continuing disability investigations. Second, the Administration has changed some of its policies regarding the review process a number of times, and it is unknown how these changes will affect the number of terminations from the program. In addition, there are many class action cases pending in the court



system. The impact of this bill on the outcome of these cases is unclear. Finally, the language of the provisions allows for various interpretations which would affect costs.

This cost estimate assumes that 110,000 medical diary reviews would be performed annually. The number of periodic reviews is assumed to decline from less than 300,000 in 1984 to 120,000 in 1989, as the percentage of beneficiaries already reviewed increases. Approximately 45 percent of the medical diary reviews are estimated to result in initial terminations of benefit payments, but CBO estimates about 57 percent of these beneficiaries would have their benefits restored after appeals are reviewed. For periodic reviews, the percentage of initial terminations is projected to decline from 40 percent in 1984 to 20 percent in 1989. About 55 percent of those initially terminated from the rolls after a periodic review are estimated to have their benefits restored in the appeal process.

There are also costs to the Medicare program which would result from a larger number of recipients continuing to receive DI benefits, because most DI beneficiaries also receive assistance from the Hospital Insurance (HI) or Supplemental Medical Insurance (SMI) components of the Medicare program. Estimates of these costs are based on the average number of disabled beneficiaries receiving HI and SMI and on the average benefit payments for these programs. There are also costs to the Medicaid program because SSI beneficiaries generally receive Medicaid.

Table 2 displays CBO's outlay estimates for the major sections of the bill. Following the table is a description of the methodology used for the estimates of the outlays for each section listed in Table 2.

TABLE 2.—ESTIMATED OUTLAYS RESULTING FROM THE MAJOR PROVISIONS IN S. 476

[By fiscal year, in millions of dollars]

	1984	1985	1986	1987	1988	1989
Termination of benefits based on medical improvement:						
DI.....	22	86	123	130	113	90
HI and SMI.....	4	25	35	40	35	25
Medical.....	( <sup>1</sup> )	3	4	4	3	3
SSI.....	1	3	4	4	3	3
Multiple impairments:						
DI.....	( <sup>1</sup> )	4	7	11	13	15
HI and SMI.....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	1	2	2
Medical.....	( <sup>1</sup> )	( <sup>1</sup> )	1	1	1	1
SSI.....	( <sup>1</sup> )	1	2	2	3	3
Continued payment during appeal:						
DI.....	25	149	112	-20	0	0
HI and SMI.....	3	48	20	0	0	0
Medical personnel qualifications:						
DI.....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	10	10	20
HI and SMI.....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	1	1	3
Medical.....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	1	1	2
SSI.....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	2	2	5
Compliance with court orders.....	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )
Vocational rehabilitation:						
DI.....	( <sup>1</sup> )	2	4	7	8	8
HI and SMI.....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
SSI.....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
Extension of sections 1619a and 1619b:						
Medical.....	3	7	7	6	0	0



TABLE 2.—ESTIMATED OUTLAYS RESULTING FROM THE MAJOR PROVISIONS IN S. 476—Continued

(By fiscal year, in millions of dollars)

	1984	1985	1986	1987	1988	1989
SSI .....	( <sup>1</sup> )	1	2	2	0	0
Total outlays <sup>3</sup> .....	57	308	300	190	192	168

<sup>1</sup> Less than \$500,000.<sup>2</sup> The costs of this provision cannot be estimated because they depend on future court decisions.<sup>3</sup> The details do not add to the totals due to interaction between provisions.

Note.—This estimate was prepared based on conversations with committee staff. A draft of the bill as ordered reported has not been received.

## TERMINATION OF BENEFITS BASED ON MEDICAL IMPROVEMENT

The medical improvement provision in S. 476 would require SSA to show that a current recipient's disabling condition has medically improved before the benefit could be terminated. Under current law, the condition of a beneficiary is compared to the medical listings and other guidelines to determine if the recipient is still disabled. SSA does not have to establish medical improvement, but only that the recipient is not disabled under current standards.

In 1979, the medical standards were made more precise; some beneficiaries who previously qualified under the old standards are now being terminated as not disabled under the new. These new standards toughened and codified stricter evaluation guidelines in determining disability. Prior to the new standards, 33.9 percent of reviews resulted in cessations; after 1979, these cessations before appeal were 40.9 percent of those reviewed. It is assumed that the resulting 20 percent increase in cessations were for those not meeting the new procedures but previously found disabled under the old. CBO assumes that 20 percent of those currently terminated are the result of this change, and are the group that would be affected by this medical improvement standard.

Of the 20 percent initially denied benefits under current law for medical improvement, we project that 85 percent would appeal and 75 percent of those who appeal would be continued on the rolls. Therefore, under current law, about 64 percent of the people losing benefits initially and whose disabilities have not improved would ultimately be continued on the DI rolls. Costs for the medical improvement provision would result from the continuation of benefits for the remaining 36 percent, who under current law, would not appeal or who would lose an appeal and would consequently be dropped from the rolls. In 1985, the first full year this provision would be in effect, it is estimated that approximately 6,500 people would be retained on the rolls as a result of this provision. The additional number of beneficiaries receiving DI as a result of this provision would fall over time as CBO's estimate of the number of CDRs performed declines. The costs to DI, including administrative expenses, are estimated to rise from \$22 million in 1984 to \$130 million in 1987, declining to \$90 million by 1989. This estimate is assumed to be applied only to prospective cases and to certain cases currently in the court system. In SSI, only concurrent cases—those receiving both DI and SSI—would be affected because no CDRs have been planned for SSI only cases.

This medical improvement provision will expire on December 31, 1987. It is possible that a larger number of terminations than currently estimated will occur after that date, since those not terminated from the rolls in the intervening period may be reevaluated after 1987. This could negate some of the costs shown in 1988 and 1989. This estimate does not include any effect of such potential savings in 1988 and 1989.

The standards set by this provision will also apply to individual litigants in pending court cases and to certain members of certified class action suits. The impact that this part of the provision will have on the ultimate decision in the court cases is difficult to estimate. Specifying standards could facilitate judgments in favor of the claimant and result in increased program costs. However, judgments could still go against the claimant, or the law could be interpreted less favorably toward the claimant, lowering costs attributable to the bill. No impact on costs or savings is included in this estimate from the provision's impact on pending court cases.

#### MULTIPLE IMPAIRMENTS

This provision would require SSA to consider whether the combination of the applicant's disabilities is severe enough to keep the individual from working at the "significant gainful activity" level in the case where no one impairment is considered severe enough to warrant benefit payments. The SSA estimates that about 500 additional cases per year would be added to the rolls as a result of this provision. This would increase DI costs by a range of less than \$500,000 in 1984 to \$15 million in 1989. In SSI, about 150 cases would be added initially, increasing SSI costs by a negligible amount in 1984 and by \$3 million in 1989.

#### CONTINUED PAYMENT DURING APPEAL

This provision would provide for continued payment of disability benefits through the Administrative Law Judge (ALJ) level of appeal for those individuals who appeal SSA's decisions to end their benefits as a result of CDRs. This provision would affect terminations through June 1986 and continue benefit payments until January 1, 1987. The estimated costs, including administrative costs, are \$25 million in 1984 and \$149 million in 1985. The costs arise as a result of extra benefits paid to those who ultimately lose their appeal but do not repay the interim benefits as required under this provision. The estimate assumes that seven months of additional benefits are paid to each individual and that 15 percent of those who are finally terminated repay the extra benefits. This repayment is expected to occur in the year after the benefits are paid.

#### MEDICAL PERSONNEL QUALIFICATIONS

This provision would require that the Secretary of HHS make every reasonable effort to ensure that a psychologist or a psychiatrist complete a medical evaluation in mental impairment cases before the individual can be denied benefits. The SSA expects fewer than 500 individuals will be added to the rolls annually as a

result of this change in procedure. DI costs would be less than \$500,000 in 1985, rising to \$20 million by 1989, while SSI costs would total \$5 million by 1989.

#### VOCATIONAL REHABILITATION

This provision changes the regulations concerning benefit payments for individuals participating in vocational rehabilitation programs. The SSA estimates that about 300 individuals per year would be affected by this change. DI costs would range from negligible in 1984 to \$8 million in 1989. SSI costs would be insignificant.

#### COMPLIANCE WITH COURT ORDERS

This provision requires SSA to apply the decisions of the circuit courts of appeal to all beneficiaries residing within states within the circuit, until or unless the decision is overruled by the Supreme Court. This provision could substantially increase costs but these effects cannot be estimated since they would depend on the outcome of future court decisions.

#### FAIL SAFE FINANCING PROPOSAL

This provision would require the Secretary of HHS to reduce or eliminate the cost-of-living adjustments and to reduce benefits for current and future disabled workers if the Disability Insurance trust fund's reserve is projected to decline to less than 20 percent of a year's outlays. This mechanism would trigger only if the Congress takes no other action. The trust fund balance used for this calculation would include the funds owed to it by the OASI trust fund—currently \$5 billion. CBO does not project the DI fund to fall below this level. The estimated DI costs in this bill do not trigger the benefit reduction mechanism.

#### EXTENSION OF SECTIONS 1619a AND 1619b

Sections 1619a and 1619b provide SSI and Medicaid benefits to disabled individuals who work and who would not otherwise be eligible for benefits because their earnings exceed the "substantial gainful activity" level. These sections, which expired on December 31, 1983, are extended by these amendments through June 30, 1987. Section 1619a is estimated to add 575 persons to the SSI rolls in 1984 and 950 by 1986. Section 1619b is estimated to add 8,300 persons to the Medicaid rolls in 1984 and 10,500 by 1986.

6. Estimated cost to State and local governments: A number of the provisions of this bill would increase expenditures of state and local governments. The estimated net impact of the bill on state and local expenditures is less than \$5 million a year.

The changes in SSI would increase state and local government costs because virtually all states supplement federal SSI benefits. By making more persons eligible for SSI benefits, state costs would increase. States are also affected by the added outlays in Medicaid because states finance a portion of the program. The current state financing share is 46 percent.

There could be some offsets to these added SSI and Medicaid costs to the extent that persons made eligible for DI and SSI by the



bill might otherwise be eligible for general assistance or health care financed fully by states and localities. These potential offsets are not included in the cost estimate.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by Stephen Chaikind and Janice Peskin.

10. Estimate approved by C. G. Nuckols for James L. Blum, Assistant Director for Budget Analysis.

## VI. REGULATORY IMPACT OF THE BILL

In the opinion of the committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate.

## VII. VOTE OF THE COMMITTEE

In compliance with paragraph 7(c) of Rule XXVI of the Standing Rules of the Senate, the following statement is made relative to the vote of the committee on the motion to report the bill. S. 476 as amended, was ordered favorably reported by a rollcall vote of 20 yeas and 0 nays.



## VIII. ADDITIONAL VIEWS OF HON. RUSSELL B. LONG

Although I continue to have reservations about S. 476, the Finance Committee has made important modifications in the bill:

The medical improvement standard in the Committee bill is a less complete presumption of continuing eligibility for persons who were not disabled when they began receiving disability benefits;

A measure of protection of the disability insurance trust fund, if the cost of the bill far exceeds the estimates, is incorporated in a fail-safe provision which will scale back cost-of-living increases if the fund begins to deteriorate;

By incorporating a statutory definition of pain the Committee bill re-emphasizes that legislative policy is set by the Congress and that the Congress expects the Administration and the courts to interpret and apply that policy in the light of the Congressional intent that the disability insurance program be carefully administered and nationally uniform; and

By providing a mandatory expedited timetable for dealing with State failure to follow Federal rules in determining eligibility, the Committee bill would prevent another protracted deterioration in State administration of this Federal program such as in now occurring.

### THE MEDICAL IMPROVEMENT STANDARD

Under legislation enacted in 1980, the Administration has conducted a large number of continuing disability reviews to see if persons on the disability insurance rolls are still disabled. A significant number of persons were removed from the rolls.

Under present law, when a recipient of disability insurance benefits is reviewed to determine whether he is still disabled, the same definition of disability applies to him as is used for a new applicant, namely: Is he able to engage in "substantial gainful employment"?

S. 476 as introduced would for the first time have set a different standard of continuing eligibility for a person already on the rolls. Finding him capable of engaging in substantial gainful activity would not have sufficed to end his benefits; the Secretary would also have had to show that he had undergone medical improvement since he was first determined to be disabled.

The Committee bill amends and improves this provision. The original bill would have almost totally foreclosed the Secretary from removing from the rolls a person who was not disabled when he began receiving benefits. The Committee bill instead lets the Secretary challenge the original disability determination, develop additional evidence and require the complainant to prove that his condition has not medically improved.

Even with this modification, the Social Security Act for the first time will have permitted persons who are able to engage in substantial gainful employment to continue receiving disability insurance benefits.

The Committee bill is estimated to cost \$2.5 billion over a five-year period. Virtually this entire amount will be paid to persons who are able to work.

These very significant costs of this legislation are justified by the proponents of the bill on the basis of the need to deal with the current chaotic situation which prevails in the administration of the social security disability program. Even if this argument were to be accepted, it remains deeply troubling for us to expend \$2.5 billion, at a time when we are struggling to cope with alarming Federal deficits, to provide benefit payments to individuals who would be unable, despite several levels of appeals, to establish their eligibility.

The situation will be much worse if the legislation, instead of resolving the current chaotic situation, simply serves as a signal for further efforts to broaden eligibility. The bill as reported by the Committee on Finance clearly does not intend such a result. However, the costs and caseloads of this program have over the years proven highly volatile and difficult to control. The adoption by the Congress of a dual standard of eligibility creates a tension which could be laying the groundwork for further expansion of the program. It may prove difficult to maintain a situation in which individuals are denied admission to the benefit rolls—even though equally or less disabled persons who managed to get on the rolls are allowed to keep receiving benefits.

#### DISABILITY PROGRAM NEEDS FURTHER REVIEW AND REVISION

S. 476, as reported by the Committee on Finance, attempts to deal with major problems which now exist in the way the program is administered. I believe a number of the provisions of the bill will help in this regard. For example, the specific provision reaffirming the existing regulation on the evaluation of pain will resolve whatever confusion there may be on this issue. It emphasizes again the Congressional view of the need to limit eligibility to cases where disability can be established by objective medical evidence. The timetable for dealing with State defiance of Federal rules should help the Secretary deal with such problems more forcefully. Even the medical improvement provision, though it is troublesome from a policy perspective, at least will resolve a large body of litigation according to a policy standard which is set, as it should be, by the Congress and not the courts.

While these features of the Finance Committee bill are desirable improvements in the program, I am concerned that there remain major problems in the structure of the disability program which are not adequately addressed by the pending legislation. If Congress is to bring this program back under control and restore the confidence of both taxpayers and beneficiaries in its evenhandedness, we will need to undertake stronger measures than those contained in this bill.

*Consistency of decisionmaking.*—One of the arguments most frequently advanced in support of the medical improvement standard is that many, or even most, of the benefit terminations as a result of the recent eligibility reviews were erroneous. The evidence offered in support of this argument is that more than half of the terminations appealed to an administrative law judge (ALJ) were overturned at that level.

While the statistic is correct, the conclusion drawn from it is not. The phenomenon of a reversal rate by ALJs exceeding 50 percent is not peculiar to the recent review process. Both for continuing reviews and initial awards, the ALJs have consistently over the past ten years reversed more than half of the cases appealed to them.

This prolonged pattern of high reversal rates indicates only that different standards are being applied at different levels of the administrative structure. This problem has been recognized for some time. The 1980 amendments attempted to address the problem by mandating a study of its causes and by requiring the Secretary to undertake to review a significant portion of cases which are reversed by ALJs. In addition to these actions, the agency has undertaken to publish rulings aimed at providing a uniform set of basic eligibility guidelines for all levels of the administrative process.

Thus far, at least, there is no evidence that any of these measures are having a significant impact. It may be too early for any results to show up, particularly in the present confused administrative atmosphere. But if the present approach does not succeed in achieving consistent decisionmaking within the present program structure, the Congress may need to consider modifications in that structure.

*The role of the courts.*—In the 1956 hearings on the question of establishing a disability program, witnesses from the insurance industry predicted that the courts would be only too eager to broaden the scope of the program beyond what Congress intended. That prediction has proven to be quite accurate. In the 1967 amendments the Committee report cited several examples of ways in which the courts had broadened the original intent of the statute. The Committee then directed the Administration to report to the Congress on "future trends of judicial interpretation of this nature," and added to the statute provisions designed to counteract those court cases.

The situation has not noticeably improved. In a recent case *Polaski v. Heckler*, a U.S. District Court judge excoriated the Secretary for following her own regulation in violation of what he deemed to be the "fundamental policies at the heart of the disability program." He found these fundamental policies embodied in a law review article by another judge to the effect that the disability statute "should be broadly construed and liberally applied." On the basis of his findings that the Secretary was not obeying what he calls "Eighth Circuit Law," this judge ordered the Secretary to substitute his policy judgment for hers (and that of the Congress) in carrying out the Social Security Act in an area covering seven States.

This case would not be so troubling if it were atypical. But apparently it is almost the judicial norm. Courts do, of course, have the responsibility to carry out the law and to resolve questions of



interpretation. In so doing, however, they should be guided by the statute and its legislative history, not by abstract theories found in law review articles. If the judge in this case had bothered to examine the statute and legislative history, he would have ample evidence of Congress's concern not that the law be more broadly construed, but that it be more narrowly construed. He would also have found great concern on the part of Congress that this law be administered more uniformly. This might have led him to give more weight to national law than to "Eighth Circuit Law." In the United States, the law is the law of the land and it is made by Congress. The courts, including the district and circuit courts, have an important role in carrying out and enforcing the law. But Circuit courts are not regional legislatures.

In its provision on the evaluation of pain, the Committee deals with one of the areas in which the Courts have been broadening the program. However, it is clear from the law review article quoted in the *Polaski* case that there are many other aspects of the program on the judicial agenda. If the regional courts are going to persist in ignoring the policy objectives expressed by Congress and persist in refusing to grant appropriate deference to the duly promulgated regulations of the Secretary, the Congress may be forced to find ways of dealing with this situation.

There have, of course, been some changes in the eligibility requirements for disability benefits since 1956. These changes, however, explain only about one-third of the growth of the program (on the basis of the cost estimates made when they were added to the law). The bulk of the growth in the costs of the disability program cannot be adequately explained except on the basis that the program has been administered in such a manner as to pay benefits to a broader population than Congress intended the program to serve.

Even more troubling than the mere fact that program costs are greater than originally estimated is the evidence that it remains a highly volatile program. Its costs could easily expand well beyond present levels. At the time the program was first enacted, the experts estimated that by 1990 there would be a little more than a million disabled workers drawing benefits. Today there are 2.6 million workers drawing benefits. This is a large increase. But just a few years ago—in 1977—the benefit rolls were growing so rapidly that the actuaries projected they would exceed 5 million disabled worker beneficiaries by 1990. That is roughly 5 times the original estimate.

In dollar terms (using a constant dollar concept based on 1984 payroll levels), the projected long-range average costs of the program have increased from \$5 billion in 1956 to \$23 billion today—a fourfold increase. But today's projected costs are far from the historic high. That occurred in 1977, when instead of the original 0.33 percent of payroll or the present 1.45 percent of payroll, the long-range program costs were projected to require a tax (on a comparable basis) of about 3.4 percent of payroll—some 10 times as high as the original estimate. This extreme point in the cost of the program was partially caused by a problem in the benefit formula. But even after that problem was corrected by the 1977 amendments, the long-range average cost of the program was estimated to be 2.49 percent of payroll—over 7 times the original cost. In compara-



ble constant dollar terms, this translates into a long-range annual average cost of \$40 billion per year.

Viewed in this perspective, it is clear that this is a program with a serious potential for getting further out of control. It could easily add billions of dollars per year to the deficit and could endanger the stability of the social security system generally. It is particularly important to note that the program is now again showing a trend towards increased costs. As a result of the actions by the States and the courts and the various moratoria imposed by the Administration, the rates of termination are on a downward trend. This is not surprising. But the program has also recently shown an upswing in the allowance rates and in application rates.

*Federal-State relationship.*—A troubling recent development in the disability program is the tendency of some States to defy Federal rules in carrying out this program which is wholly Federally funded. Even more troubling is the fact that the Secretary took no action to bring the errant States back into line. The Committee bill does attempt to deal with this for the future by establishing firm and mandatory time frames for proceeding to Federalized operations in States which refuse to comply. This situation must be monitored, however, if it is not to recur.

*The handicapped population.*—One reason for the volatility of the disability program is that it is intentionally limited to only the most severely disabled—those who because of their impairment cannot engage in any substantial gainful work activity. This limitation is based not solely on cost but on grounds of policy. The law should not encourage those who retain the capacity for self-support to become dependent.

Unfortunately, if society cannot provide employment opportunities for handicapped individuals who are not totally disabled, they will understandably seek to be found eligible for benefits under the disability programs. And it will be difficult for the administrators of those programs to deny them eligibility.

If we are to succeed in controlling the cost of the disability insurance program, we must find more effective ways of opening up jobs to those handicapped people who have the capability to become productive members of society. While this problem is beyond the scope of the pending bill, our failure to solve this problem has a great deal to do with why this bill is needed. There would be no requirement for a medical improvement standard if we could offer a job to any handicapped person who could work.

I hope the Congress will turn its attention to this issue and that the administration will consider whether it cannot recommend to Congress some significant measures to increase the availability of job openings for the handicapped.

#### THE GROWTH OF THE DISABILITY PROGRAM

When the disability program was enacted in 1956, it was projected that the program could be permanently financed by a combined employer-employee tax of 0.42 percent of payroll. After adjusting for the proportion of covered wages which are subject to tax, that is closer to a rate of 0.33 percent in today's terms. Since that time, the cost of the program has grown significantly. In the 1984 report

of the Social Security trustees, the long-range costs of the program are estimated at 1.45 percent of payroll, some 4 times what was originally estimated. Expressed on a constant-dollar basis in relation to 1984 payroll levels, the long-range average cost of the program has increased from \$5 billion per year to \$23 billion per year.

Just in the past year, the social security actuaries have been required to significantly increase their estimates of what this program will cost even if there is no additional legislation. For the 10-year period ending 1992, the 1984 trustees report indicates that without any legislative change the projected disability program costs have increased by \$5.5 billion. The estimates of the long-range average annual costs have similarly increased by over \$1 billion per year.

For this reason, there are grounds for serious concern over the possibility that the enactment of disability legislation could be taken as a signal which would unleash another explosion of program costs. If that were to take place, the currently estimated costs of the bill, although they are substantial, would pale in comparison with the true costs of the bill. There is good reason to expect that the enactment of this legislation in the form it passed the House or in the form in which it was referred to the Finance Committee would produce just such results. The Finance Committee has modified this legislation and, in particular, has attempted to clarify it in several ways to limit the possibility that it could mistakenly be seen as the starting signal for another round of program growth. Even so, careful monitoring will be required, given the historic difficulty of controlling the program. In particular, it would be very difficult to responsibly support this legislation if the safeguards included by the Finance Committee were weakened in any significant degree.

RUSSELL B. LONG.

## IX. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In the opinion of the committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of subsection 4 of Rule XXIX of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill, S. 476, as reported by the committee).

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NOTICE: In lieu of a star print, errata are printed to indicate corrections to the original report.

98TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
98-466

## ERRATA

MAY 18 (legislative day, MAY 14), 1984.—Ordered to be printed

Mr. DOLE, from the Committee on Finance,  
submitted the following

## REPORT

together with

## ADDITIONAL VIEWS

[To accompany S. 476]

## CORRECTIONS

Page 2, line 1: delete "for a period of 3½ years" and insert "through December 31, 1987"; paragraph 4, line 2: insert comma after "eligibility"; last paragraph, line 3, add "s" to "require".

Page 7, next to last line: delete the word "currently".

Page 8, line 6: the word "lasted" is misspelled; paragraph 6, line 6, new paragraph before "(Benefits"; last paragraph, second line, insert "This" before "Burden".

Page 10, strike second sentence and insert: Only if the individual satisfies the burden of showing that his medical condition has not improved would the burden be upon the Secretary to show some other change in circumstances that would warrant terminating benefits. If the claimant cannot meet the burden of showing no medical improvement or the Secretary can show a change in circumstances, eligibility would be determined under the present law test of ability to engage in substantial gainful activity.

Page 13, line 2: delete "and"; line 3: the word "new" is misspelled; line 13: insert "a"; paragraph 2, line 15, the word "their" is misspelled; last line of paragraph 3: the word "for" should be "far".

Page 18, line 6, indent Committee amendment; line 10 of second paragraph: delete comma after "administrative"; line 3 of fourth paragraph, insert apostrophe in Administration's; line 4 of fourth paragraph, delete comma after "(SSA's)".

Page 19, line 2: delete comma after "standards".

Page 21, paragraph 4, line 16: insert comma after "Mendoza,".

Page 22, line 3 of paragraph 1: the word "functional" is misspelled; line 2 paragraph 4: the word "cumulatively" is misspelled.

Page 23, paragraph 3, line 15: the word "guidelines" is misspelled.

Page 25, line 5 of paragraph 4: the word "contract" should be "contact".

Page 27, paragraph 2, line 2: the word "seven" should be "severe."; line 3: add "s" to impairment; line 9: delete the word "thus".

Page 28, paragraph 5: the word "temporary" is misspelled.

Page 30, line 4: the word "beneficiary" is misspelled; the word "periodically" is misspelled; next to last line delete the first "that" and insert "and".

Page 32, paragraph 2: insert the word "which" after "State".

Page 33, paragraph 4, line 7: the partial word "preli-" is misspelled.

Page 34, after the author's name and affiliation (on memo) add "Social Security Administration".

Page 43:

In the original printing of Senate Report 98-466, several paragraphs of the additional views of the Honorable Russell B. Long were misplaced. The additional views are correctly reprinted below.

## ADDITIONAL VIEWS OF THE HONORABLE RUSSELL B. LONG

Although I continue to have reservations about S. 476, the Finance Committee has made important modifications in the bill :

The medical improvement standard in the committee bill is a less complete presumption of continuing eligibility for persons who were not disabled when they began receiving disability benefits.

A measure of protection of the disability insurance trust fund, if the cost of the bill far exceeds the estimates, is incorporated in a fail-safe provision which will scale back cost-of-living increases if the fund begins to deteriorate.

By incorporating a statutory definition of pain the committee bill re-emphasizes that legislative policy is set by the Congress and that the Congress expects the administration and the courts to interpret and apply that policy in the light of the congressional intent that the disability insurance program be carefully administered and nationally uniform.

By providing a mandatory expedited timetable for dealing with State failure to follow Federal rules in determining eligibility, the committee bill would prevent another protracted deterioration in State administration of this Federal program such as is now occurring.

### THE MEDICAL IMPROVEMENT STANDARD

Under legislation enacted in 1980, the administration has conducted a large number of continuing disability reviews to see if persons on the disability insurance rolls are still disabled. A significant number of persons were removed from the rolls.

Under present law, when a recipient of disability insurance benefits is reviewed to determine whether he is still disabled, the same definition of disability applies to him as is used for a new applicant, namely : Is he able to engage in "substantial gainful employment?"

S. 476 as introduced would for the first time have set a different standard of continuing eligibility for a person already on the rolls. Finding him capable of engaging in substantial gainful activity would not have sufficed to end his benefits; the Secretary would also have had to show that he had undergone medical improvement since he was first determined to be disabled.

The committee bill amends and improves this provision. The original bill would have almost totally foreclosed the Secretary from removing from the rolls a person who was not disabled when he began receiving benefits. The committee bill instead lets the Secretary challenge the original disability determination, develop additional evidence and require the complainant to prove that his condition has not medically improved.

Even with this modification, the Social Security Act for the first time will have permitted persons who are able to engage in substantial gainful employment to continue receiving disability insurance benefits.

The committee bill is estimated to cost \$2.5 billion over a 5-year period. Virtually this entire amount will be paid to persons who are able to work.

These very significant costs of this legislation are justified by the proponents of the bill on the basis of the need to deal with the current chaotic situation which prevails in the administration of the social security disability program. Even if this argument were to be accepted, it remains deeply troubling for us to expend \$2.5 billion, at a time when we are struggling to cope with alarming Federal deficits, to provide benefit payments to individuals who would be unable, despite several levels of appeal, to establish their eligibility.

The situation will be much worse if the legislation, instead of resolving the current chaotic situation, simply serves as a signal for further efforts to broaden eligibility. The bill as reported by the Committee on Finance clearly does not intend such a result. However, the costs and caseloads of this program have over the years proven highly volatile and difficult to control. The adoption by the Congress of a dual standard of eligibility creates a tension which could be laying the groundwork for further expansion of the program. It may prove difficult to maintain a situation in which individuals are denied admission to the benefit rolls—even though equally or less disabled persons who managed to get on the rolls are allowed to keep receiving benefits.

#### *Disability Program Needs Further Review and Revision*

S. 476, as reported by the Committee on Finance, attempts to deal with major problems which now exist in the way the program is administered. I believe a number of the provisions of the bill will help in this regard. For example, the specific provision reaffirming the existing regulation on the evaluation of pain will resolve whatever confusion there may be on this issue. It emphasizes again the congressional view of the need to limit eligibility to cases where disability can be established by objective medical evidence. The timetable for dealing with State defiance of Federal rules should help the Secretary deal with such problems more forcefully. Even the medical improvement provision, though it is troublesome from a policy perspective, at least will resolve a large body of litigation according to a policy standard which is set, as it should be, by the Congress and not the courts.

While these features of the Finance Committee bill are desirable improvements in the program, I am concerned that there remain major problems in the structure of the disability program which are not adequately addressed by the pending legislation. If Congress is to bring this program back under control and restore the confidence of both taxpayers and beneficiaries in its evenhandedness, we will need to undertake stronger measures than those contained in this bill.

Consistency of decisionmaking.—One of the arguments most frequently advanced in support of the medical improvement standard is that many, or even most, of the benefit terminations as a result of the recent eligibility reviews were erroneous. The evidence offered in sup-



port of this argument is that more than half of the terminations appealed to an administrative law judge (ALJ) were overturned at that level.

While the statistic is correct, the conclusion drawn from it is not. The phenomenon of a reversal rate by ALJ's exceeding 50 percent is not peculiar to the recent review process. Both for continuing reviews and initial awards, the ALJs have consistently over the past 10 years reversed more than half of the cases appealed to them.

This prolonged pattern of high reversal rates indicates only that different standards are being applied at different levels of the administrative structure. This problem has been recognized for some time. The 1980 amendments attempted to address the problem by mandating a study of its causes and by requiring the Secretary to undertake to review a significant portion of cases which are reversed by ALJ's. In addition to these actions, the agency has undertaken to publish rulings aimed at providing a uniform set of basic eligibility guidelines for all levels of the administrative process.

Thus far, at least, there is no evidence that any of these measures are having a significant impact. It may be too early for any results to show up, particularly in the present confused administrative atmosphere. But if the present approach does not succeed in achieving consistent decisionmaking within the present program structure, the Congress may need to consider modifications in that structure.

The role of the courts.—In the 1956 hearings on the question of establishing a disability program, witnesses from the insurance industry predicted that the courts would be only too eager to broaden the scope of the program beyond what Congress intended. That prediction has proven to be quite accurate. In the 1967 amendments, the committee report cited several examples of ways in which the courts had broadened the original intent of the statute. The committee then directed the administration to report to the Congress on "future trends of judicial interpretation of this nature," and added to the statute provisions designed to counteract those court cases.

The situation has not noticeably improved. In a recent case (*Polaski v. Heckler*), a U.S. District Court judge excoriated the Secretary for following her own regulation in violation of what he deemed to be the "fundamental policies at the heart of the disability program." He found these fundamental policies embodied in a law review article by another judge to the effect that the disability statute "should be broadly construed and liberally applied." On the basis of his findings that the Secretary was not obeying what he calls "Eighth Circuit Law," this judge ordered the Secretary to substitute his policy judgment for hers (and that of the Congress) in carrying out the Social Security Act in an area covering seven States.

This case would not be so troubling if it were atypical. But apparently it is almost the judicial norm. Courts do, of course, have the responsibility to carry out the law and to resolve questions of interpretation. In so doing, however, they should be guided by the statute and its legislative history, not by abstract theories found in law review articles. If the judge in this case had bothered to examine the statute and legislative history, he would have ample evidence of Congress' concern not that the law be more broadly construed, but that it be

more narrowly construed. He would also have found great concern on the part of Congress that this law be administered more uniformly. This might have led him to give more weight to national law than to "Eighth Circuit Law." In the United States, the law is the law of the land and it is made by Congress. The courts, including the district and circuit courts, have an important role in carrying out and enforcing the law. But Circuit courts are not regional legislatures.

In its provision on the evaluation of pain, the Committee deals with one of the areas in which the Courts have been broadening the program. However, it is clear from the law review article quoted in the *Polaski* case that there are many other aspects of the program on the judicial agenda. If the regional courts are going to persist in ignoring the policy objectives expressed by Congress and persist in refusing to grant appropriate deference to the duly promulgated regulations of the Secretary, the Congress may be forced to find ways of dealing with this situation.

**Federal-State relationship.**—A troubling recent development in the disability program is the tendency of some States to defy Federal rules in carrying out this program which is wholly federally funded. Even more troubling is the fact that the Secretary took no action to bring the errant States back into line. The committee bill does attempt to deal with this for the future by establishing firm and mandatory time frames for proceeding to federalized operations in States which refuse to comply. This situation must be monitored, however, if it is not to recur.

**The handicapped population.**—One reason for the volatility of the disability program is that it is intentionally limited to only the most severely disabled—those who because of their impairment cannot engage in any substantial gainful work activity. This limitation is based not solely on the cost but on grounds of policy. The law should not encourage those who retain the capacity for self-support to become dependent.

Unfortunately, if society cannot provide employment opportunities for handicapped individuals who are not totally disabled, they will understandably seek to be found eligible for benefits under the disability programs. And it will be difficult for the administration of those programs to deny them eligibility.

If we are to succeed in controlling the cost of the disability insurance program, we must find more effective ways of opening up jobs to those handicapped people who have the capability to become productive members of society. While this problem is beyond the scope of the pending bill, our failure to solve this problem has a great deal to do with why this bill is needed. There would be no requirement for a medical improvement standard if we could offer a job to any handicapped person who could work.

I hope the Congress will turn its attention to this issue and that the administration will consider whether it cannot recommend to Congress some significant measures to increase the availability of job openings for the handicapped.

### *The Growth of the Disability Program*

When the disability program was enacted in 1956, it was projected that the program could be permanently financed by a combined

employer-employee tax of 0.42 percent of payroll. After adjusting for the proportion of covered wages which are subject to tax, that is closer to a rate of 0.33 percent in today's terms. Since that time, the cost of the program has grown significantly. In the 1984 report of the Social Security trustees, the long-range costs of the program are estimated at 1.45 percent of payroll, some 4 times what was originally estimated. Expressed on a constant-dollar basis in relation to 1984 payroll levels, the long-range average cost of the program has increased from \$5 billion per year to \$23 billion per year.

There have, of course, been some changes in the eligibility requirements for disability benefits since 1956. These changes, however, explain only about one-third of the growth of the program (on the basis of the cost estimates made when they were added to the law). The bulk of the growth in the costs of the disability program cannot be adequately explained except on the basis that the program has been administered in such a manner as to pay benefits to a broader population than Congress intended the program to serve.

Even more troubling than the mere fact that program costs are greater than originally estimated is the evidence that it remains a highly volatile program. Its costs could easily expand well beyond present levels. At the time the program was first enacted, the experts estimated that by 1990 there would be a little more than a million disabled workers drawing benefits. Today there are 2.6 million workers drawing benefits. This is a large increase. But just a few years ago—in 1977—the benefit rolls were growing so rapidly that the actuaries projected they would exceed 5 million disabled worker beneficiaries by 1990. That is roughly 5 times the original estimate.

In dollar terms (using a constant dollar concept based on 1984 payroll levels), the projected long-range average costs of the program have increased from \$5 billion in 1956 to \$23 billion today—a fourfold increase. But today's projected costs are far from the historic high. That occurred in 1977, when instead of the original 0.33 percent of payroll or the present 1.45 percent of payroll, the long-range program costs were projected to require a tax (on a comparable basis) of about 3.4 percent of payroll—some 10 times as high as the original estimate. This extreme point in the cost of the program was partially caused by a problem in the benefit formula. But even after that problem was corrected by the 1977 amendments, the long-range average cost of the program was estimated to be 2.49 percent of payroll—over 7 times the original cost. In comparable constant dollar terms, this translates into a long-range annual average cost of \$40 billion per year.

Viewed in this perspective, it is clear that this is a program with a serious potential for getting further out of control. It could easily add billions of dollars per year to the deficit and could endanger the stability of the social security system generally. It is particularly important to note that the program is now again showing a trend towards increased costs. As a result of the actions by the States and the courts and the various moratoria imposed by the administration, the rates of termination are on a downward trend. This is not surprising. But the program has also recently shown an upswing in the allowance rates and in application rates.

Just in the past year, the social security actuaries have been required to significantly increase their estimates of what this program will cost



even if there is no additional legislation. For the 10-year period ending 1992, the 1984 trustees report indicates that without any legislative change the projected disability program costs have increased by \$5.5 billion. The estimates of the long-range average annual costs have similarly increased by over \$1 billion per year.

For this reason, there are grounds for serious concern over the possibility that the enactment of disability legislation could be taken as a signal which would unleash another explosion of program costs. If that were to take place, the currently estimated costs of the bill, although they are substantial, would pale in comparison with the true costs of the bill. There is good reason to expect that the enactment of this legislation in the form it passed the House or in the form in which it was referred to the Finance Committee would produce just such results. The Finance Committee has modified this legislation and, in particular, has attempted to clarify it in several ways to limit the possibility that it could mistakenly be seen as the starting signal for another round of program growth. Even so, careful monitoring will be required, given the historic difficulty of controlling the program. In particular, it would be very difficult to responsibly support this legislation if the safeguards included by the Finance Committee were weakened in any significant degree.





## SOCIAL SECURITY DISABILITY BENEFITS REFORM ACT OF 1984

SEPTEMBER 19, 1984.—Ordered to be printed

Mr. ROSTENKOWSKI, from the committee of conference,  
submitted the following

### CONFERENCE REPORT

[To accompany H.R. 3755]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3755) to amend titles II and XVI of the Social Security Act to provide for reform in the disability determination process, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

#### SHORT TITLE AND TABLE OF CONTENTS

*SECTION 1. This Act may be cited as the "Social Security Disability Benefits Reform Act of 1984".*

#### TABLE OF CONTENTS

- Sec. 1. Short title and table of contents.*
- Sec. 2. Standard of review for termination of disability benefits and periods of disability.*
- Sec. 3. Evaluation of pain.*
- Sec. 4. Multiple impairments.*
- Sec. 5. Moratorium on mental impairment reviews.*
- Sec. 6. Notice of reconsideration; prereview notice; demonstration projects.*
- Sec. 7. Continuation of benefits during appeal.*
- Sec. 8. Qualifications of medical professionals evaluating mental impairments.*
- Sec. 9. Consultative examinations; medical evidence.*
- Sec. 10. Uniform standards.*
- Sec. 11. Payment of costs of rehabilitation services.*
- Sec. 12. Advisory council study.*

- Sec. 13. Qualifying experience for appointment of certain staff attorneys to administrative law judge positions.  
 Sec. 14. Supplemental security income benefits for individuals who perform substantial gainful activity despite severe medical impairment.  
 Sec. 15. Frequency of continuing eligibility reviews.  
 Sec. 16. Determination and monitoring of need for representative payee.  
 Sec. 17. Measures to improve compliance with Federal law.  
 Sec. 18. Separability.

STANDARD OF REVIEW FOR TERMINATION OF DISABILITY BENEFITS  
 AND PERIODS OF DISABILITY

SEC. 2. (a) Section 223(f) of the Social Security Act is amended to read as follows:

"STANDARD OF REVIEW FOR TERMINATION OF DISABILITY BENEFITS

"(f) A recipient of benefits under this title or title XVIII based on the disability of any individual may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

"(1) substantial evidence which demonstrates that—

"(A) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the individual's ability to work), and

"(B)(i) the individual is now able to engage in substantial gainful activity, or

"(ii) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is no longer deemed, under regulations prescribed by the Secretary, sufficient to preclude the individual from engaging in gainful activity; or

"(2) substantial evidence which—

"(A) consists of new medical evidence and (in a case to which clause (ii)(II) does not apply) a new assessment of the individual's residual functional capacity, and demonstrates that—

"(i) although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology (related to the individual's ability to work), and

"(ii)(I) the individual is now able to engage in substantial gainful activity, or

"(II) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is no longer deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity, or

"(B) demonstrates that—

"(i) although the individual has not improved medically, he or she has undergone vocational therapy (related to the individual's ability to work), and

*“(ii) the requirements of subclause (I) or (II) of subparagraph (A)(ii) are met; or*

*“(3) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual’s impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore—*

*“(A) the individual is able to engage in substantial gainful activity, or*

*“(B) if the individual is a widow or surviving divorced wife under section 202(e) or a widower or surviving divorced husband under section 202(f), the severity of his or her impairment or impairments is not deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity; or*

*“(4) substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to that determination) which demonstrates that a prior determination was in error.*

*Nothing in this subsection shall be construed to require a determination that a recipient of benefits under this title or title XVIII based on an individual’s disability is entitled to such benefits if the prior determination was fraudulently obtained or if the individual is engaged in substantial gainful activity (or gainful activity in the case of a widow, surviving divorced wife, widower, or surviving divorced husband), cannot be located, or fails, without good cause, to cooperate in a review of the entitlement to such benefits or to follow prescribed treatment which would be expected to restore his or her ability to engage in substantial gainful activity (or gainful activity in the case of a widow, surviving divorced wife, widower, or surviving divorced husband). Any determination under this section shall be made on the basis of all the evidence available in the individual’s case file, including new evidence concerning the individual’s prior or current condition which is presented by the individual or secured by the Secretary. Any determination made under this section shall be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual’s condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the individual has previously been determined to be disabled. For purposes of this subsection, a benefit under this title is based on an individual’s disability if it is a disability insurance benefit, a child’s, widow’s, or widower’s insurance benefit based on disability, or a mother’s or father’s insurance benefit based on the disability of the mother’s or father’s child who has attained age 16.”*

*(b) Section 216(i)(2)(D) of such Act is amended by adding at the end thereof the following: “The provisions set forth in section 223(f) with respect to determinations of whether entitlement to benefits under this title or title XVIII based on the disability of any individual is terminated (on the basis of a finding that the physical or*



mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling) shall apply in the same manner and to the same extent with respect to determinations of whether a period of disability has ended (on the basis of a finding that the physical or mental impairment on the basis of which the finding of disability was made has ceased, does not exist, or is not disabling)."

(c) Section 1614(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(5) A recipient of benefits based on disability under this title may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

"(A) substantial evidence which demonstrates that—

"(i) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the individual's ability to work), and

"(ii) the individual is now able to engage in substantial gainful activity; or

"(B) substantial evidence (except in the case of an individual eligible to receive benefits under section 1619) which—

"(i) consists of new medical evidence and a new assessment of the individual's residual functional capacity, and demonstrates that—

"(I) although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology (related to the individual's ability to work), and

"(II) the individual is now able to engage in substantial gainful activity, or

"(ii) demonstrates that—

"(I) although the individual has not improved medically, he or she has undergone vocational therapy (related to the individual's ability to work), and

"(II) the individual is now able to engage in substantial gainful activity; or

"(C) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore the individual is able to engage in substantial gainful activity; or

"(D) substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to that determination) which demonstrates that a prior determination was in error.

Nothing in this paragraph shall be construed to require a determination that an individual receiving benefits based on disability



under this title is entitled to such benefits if the prior determination was fraudulently obtained or if the individual is engaged in substantial gainful activity, cannot be located, or fails, without good cause, to cooperate in a review of his or her entitlement or to follow prescribed treatment which would be expected to restore his or her ability to engage in substantial gainful activity. Any determination under this paragraph shall be made on the basis of all the evidence available in the individual's case file, including new evidence concerning the individual's prior or current condition which is presented by the individual or secured by the Secretary. Any determination made under this paragraph shall be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual's condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the individual has previously been determined to be disabled."

(d)(1) The amendments made by this section shall apply only as provided in this subsection.

(2) The amendments made by this section shall apply to—

(A) determinations made by the Secretary on or after the date of the enactment of this Act;

(B) determinations with respect to which a final decision of the Secretary has not yet been made as of the date of the enactment of this Act and with respect to which a request for administrative review is made in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act and regulations of the Secretary;

(C) determinations with respect to which a request for judicial review was pending on September 19, 1984, and which involve an individual litigant or a member of a class in a class action who is identified by name in such pending action on such date; and

(D) determinations with respect to which a timely request for judicial review is or has been made by an individual litigant of a final decision of the Secretary made within 60 days prior to the date of the enactment of this Act.

In the case of determinations described in subparagraphs (C) and (D) in actions relating to medical improvement, the court shall remand such cases to the Secretary for review in accordance with the provisions of the Social Security Act as amended by this section.

(3) In the case of a recipient of benefits under title II, XVI, or XVIII of the Social Security Act—

(A) who has been determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits were provided has ceased, does not exist, or is not disabling, and

(B) who was a member of a class certified on or before September 19, 1984, in a class action relating to medical improvement pending on September 19, 1984, but was not identified by name as a member of the class on such date,

the court shall remand such case to the Secretary. The Secretary shall notify such individual by certified mail that he may request a review of the determination described in subparagraph (A) based on the provisions of this section and the provisions of the Social Security

ty Act as amended by this section. Such notification shall specify that the individual must request such review within 120 days after the date on which such notification is received. If such request is made in a timely manner, the Secretary shall make a review of the determination described in subparagraph (A) in accordance with the provisions of this section and the provisions of the Social Security Act as amended by this section. The amendments made by this section shall apply with respect to such review, and the determination described in subparagraph (A) (and any redetermination resulting from such review) shall be subject to further administrative and judicial review, only if such request is made in a timely manner.

(4) The decision by the Secretary on a case remanded by a court pursuant to this subsection shall be regarded as a new decision on the individual's claim for benefits, which supersedes the final decision of the Secretary. The new decision shall be subject to further administrative review and to judicial review only in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act and regulations issued by the Secretary in conformity with such section.

(5) No class in a class action relating to medical improvement may be certified after September 19, 1984, if the class action seeks judicial review of a decision terminating entitlement (or a period of disability) made by the Secretary of Health and Human Services prior to September 19, 1984.

(6) For purposes of this subsection, the term "action relating to medical improvement" means an action raising the issue of whether an individual who has had his entitlement to benefits under title II, XVI, or XVIII of the Social Security Act based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.

(e) Any individual whose case is remanded to the Secretary pursuant to subsection (d) or whose request for a review is made in a timely manner pursuant to subsection (d), may elect, in accordance with section 223(g) or 1631(a)(7) of the Social Security Act, to have payments made beginning with the month in which he makes such election, and ending as under such section 223(g) or 1631(a)(7). Notwithstanding such section 223(g) or 1631(a)(7), such payments (if elected)—

(1) shall be made at least until an initial redetermination is made by the Secretary; and

(2) shall begin with the payment for the month in which such individual makes such election.

(f) In the case of any individual who is found to be under a disability after a review required under this section, such individual shall be entitled to retroactive benefits beginning with benefits payable for the first month to which the most recent termination of benefits applied.

(g) The Secretary of Health and Human Services shall prescribe regulations necessary to implement the amendments made by this

section not later than 180 days after the date of the enactment of this Act.

#### EVALUATION OF PAIN

SEC. 3. (a)(1) Section 223(d)(5) of the Social Security Act is amended by inserting after the first sentence the following new sentences: "An individual's statement as to pain or other symptoms shall not alone be conclusive evidence of disability as defined in this section; there must be medical signs and findings, established by medically acceptable clinical or laboratory diagnostic techniques, which show the existence of a medical impairment that results from anatomical, physiological, or psychological abnormalities which could reasonably be expected to produce the pain or other symptoms alleged and which, when considered with all evidence required to be furnished under this paragraph (including statements of the individual or his physician as to the intensity and persistence of such pain or other symptoms which may reasonably be accepted as consistent with the medical signs and findings), would lead to a conclusion that the individual is under a disability. Objective medical evidence of pain or other symptoms established by medically acceptable clinical or laboratory techniques (for example, deteriorating nerve or muscle tissue) must be considered in reaching a conclusion as to whether the individual is under a disability."

(2) Section 1614(a)(3)(H) of such Act (as added by section 8 of this Act) is amended by striking out "section 221(h)" and inserting in lieu thereof "sections 221(h) and 223(d)(5)".

(3) The amendments made by paragraphs (1) and (2) shall apply to determinations made prior to January 1, 1987.

(b)(1) The Secretary of Health and Human Services shall appoint a Commission on the Evaluation of Pain (hereafter in this section referred to as the "Commission") to conduct a study concerning the evaluation of pain in determining under titles II and XVI of the Social Security Act whether an individual is under a disability. Such study shall be conducted in consultation with the National Academy of Sciences.

(2) The Commission shall consist of at least twelve experts, including a significant representation from the field of medicine who are involved in the study of pain, and representation from the fields of law, administration of disability insurance programs, and other appropriate fields of expertise.

(3) The Commission shall be appointed by the Secretary of Health and Human Services (without regard to the requirements of the Federal Advisory Committee Act) within 60 days after the date of the enactment of this Act. The Secretary shall from time to time appoint one of the members to serve as Chairman. The Commission shall meet as often as the Secretary deems necessary.

(4) Members of the Commission shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Members who are not employees of the United States, while attending meetings of the Commission or otherwise serving on the business of the Commission, shall be paid at a rate equal to the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5,



United States Code, for each day, including traveltime, during which they are engaged in the actual performance of duties vested in the Commission. While engaged in the performance of such duties away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(5) The Commission may engage such technical assistance from individuals skilled in medical and other aspects of pain as may be necessary to carry out its functions. The Secretary shall make available to the Commission such secretarial, clerical, and other assistance and any pertinent data prepared by the Department of Health and Human Services as the Commission may require to carry out its functions.

(6) The Secretary shall submit the results of the study under paragraph (1), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than December 31, 1985. The Commission shall terminate at the time such results are submitted.

#### MULTIPLE IMPAIRMENTS

SEC. 4. (a)(1) Section 223(d)(2) of the Social Security Act is amended by adding at the end thereof the following new subparagraph:

"(C) In determining whether an individual's physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under this section, the Secretary shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity. If the Secretary does find a medically severe combination of impairments, the combined impact of the impairments shall be considered throughout the disability determination process."

(2) The third sentence of section 216(i)(1) of such Act is amended by inserting "(2)(C)," after "(2)(A),".

(b) Section 1614(a)(3) of such Act is amended by adding at the end thereof the following new subparagraph:

"(G) In determining whether an individual's physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under this section, the Secretary shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity. If the Secretary does find a medically severe combination of impairments, the combined impact of the impairments shall be considered throughout the disability determination process."

(c) The amendments made by this section shall apply with respect to determinations made on or after the first day of the first month beginning after 30 days after the date of the enactment of this Act.

#### MORATORIUM ON MENTAL IMPAIRMENT REVIEWS

SEC. 5. (a) The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall revise the criteria



embodied under the category "Mental Disorders" in the "Listing of Impairments" in effect on the date of the enactment of this Act under appendix 1 to subpart P of part 404 of title 20 of the Code of Federal Regulations. The revised criteria and listings, alone and in combination with assessments of the residual functional capacity of the individuals involved, shall be designed to realistically evaluate the ability of a mentally impaired individual to engage in substantial gainful activity in a competitive workplace environment. Regulations establishing such revised criteria and listings shall be published no later than 120 days after the date of the enactment of this Act.

(b)(1) Until such time as revised criteria have been established by regulation in accordance with subsection (a), no continuing eligibility review shall be carried out under section 221(i) of the Social Security Act, or under the corresponding requirements established for disability determinations and reviews under title XVI of such Act, with respect to any individual previously determined to be under a disability by reason of a mental impairment, if—

(A) no initial decision on such review has been rendered with respect to such individual prior to the date of the enactment of this Act, or

(B) an initial decision on such review was rendered with respect to such individual prior to the date of the enactment of this Act but a timely appeal from such decision was filed or was pending on or after June 7, 1983.

For purposes of this paragraph and subsection (c)(1) the term "continuing eligibility review", when used to refer to a review of a previous determination of disability, includes any reconsideration of or hearing on the initial decision rendered in such review as well as such initial decision itself, and any review by the Appeals Council of the hearing decision.

(2) Paragraph (1) shall not apply in any case where the Secretary determines that fraud was involved in the prior determination, or where an individual (other than an individual eligible to receive benefits under section 1619 of the Social Security Act) is determined by the Secretary to be engaged in substantial gainful activity (or gainful activity, in the case of a widow, surviving divorced wife, widower, or surviving divorced husband for purposes of section 202(e) and (f) of such Act).

(c)(1) Any initial determination that an individual is not under a disability by reason of a mental impairment and any determination that an individual is not under a disability by reason of a mental impairment in a reconsideration of or hearing on an initial disability determination, made or held under title II or XVI of the Social Security Act after the date of the enactment of this Act and prior to the date on which revised criteria are established by regulation in accordance with subsection (a), and any determination that an individual is not under a disability by reason of a mental impairment made under or in accordance with title II or XVI of such Act in a reconsideration of, hearing on, review by the Appeals Council of, or judicial review of a decision rendered in any continuing eligibility review to which subsection (b)(1) applies, shall be redetermined by

*the Secretary as soon as feasible after the date on which such criteria are so established, applying such revised criteria.*

*(2) In the case of a redetermination under paragraph (1) of a prior action which found that an individual was not under a disability, if such individual is found on redetermination to be under a disability, such redetermination shall be applied as though it had been made at the time of such prior action.*

*(3) Any individual with a mental impairment who was found to be not disabled pursuant to an initial disability determination or a continuing eligibility review between March 1, 1981, and the date of the enactment of this Act, and who reapplies for benefits under title II or XVI of the Social Security Act, may be determined to be under a disability during the period considered in the most recent prior determination. Any reapplication under this paragraph must be filed within one year after the date of the enactment of this Act, and benefits payable as a result of the preceding sentence shall be paid only on the basis of the reapplication.*

*NOTICE OF RECONSIDERATION; PREREVIEW NOTICE; DEMONSTRATION PROJECTS*

*SEC. 6. (a) Section 221(i) of the Social Security Act is amended by adding at the end thereof the following new paragraph:*

*"(4) In any case in which the Secretary initiates a review under this subsection of the case of an individual who has been determined to be under a disability, the Secretary shall notify such individual of the nature of the review to be carried out, the possibility that such review could result in the termination of benefits, and the right of the individual to provide medical evidence with respect to such review."*

*(b) Section 1633 of such Act is amended by adding at the end thereof the following new subsection:*

*"(c) In any case in which the Secretary initiates a review under this title, similar to the continuing disability reviews authorized for purposes of title II under section 221(i), the Secretary shall notify the individual whose case is to be reviewed in the same manner as required under section 221(i)(4)."*

*(c) The Secretary shall institute a system of notification required by the amendments made by subsections (a) and (b) as soon as is practicable after the date of the enactment of this Act.*

*(d) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, implement demonstration projects in which the opportunity for a personal appearance prior to a determination of ineligibility for persons reviewed under section 221(i) of the Social Security Act is substituted for the face to face evidentiary hearing required by section 205(b)(2) of such Act. Such demonstration projects shall be conducted in not fewer than five States, and shall also include disability determinations with respect to individuals reviewed under title XVI of such Act. The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than December 31, 1986.*

(e) *The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, implement demonstration projects in which the opportunity for a personal appearance is provided the applicant prior to initial disability determinations under subsections (a), (c), and (g) of section 221 of the Social Security Act, and prior to initial disability determinations on applications for benefits under title XVI of such Act. Such demonstration projects shall be conducted in not fewer than five States. The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than December 31, 1986.*

**CONTINUATION OF BENEFITS DURING APPEAL**

**SEC. 7.** (a)(1) *Section 223(g)(1) of the Social Security Act is amended—*

*(A) in the matter following subparagraph (C), by striking out “and the payment of any other benefits under this Act based on such individual’s wages and self-employment income (including benefits under title XVIII),” and inserting in lieu thereof “; the payment of any other benefits under this title based on such individual’s wages and self-employment income, the payment of mother’s or father’s insurance benefits to such individual’s mother or father based on the disability of such individual as a child who has attained age 16, and the payment of benefits under title XVIII based on such individual’s disability,”; and*

*(B) in clause (iii) by striking out “June 1984” and inserting in lieu thereof “June 1988”.*

*(2) Section 223(g)(3)(B) of such Act is amended by striking out “December 7, 1983” and inserting in lieu thereof “January 1, 1988”.*

*(b) Section 1631(a) of such Act is amended by adding at the end thereof the following new paragraph:*

*“(7)(A) In any case where—*

*“(i) an individual is a recipient of benefits based on disability or blindness under this title,*

*“(ii) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and as a consequence such individual is determined not to be entitled to such benefits, and*

*“(iii) a timely request for review or for a hearing is pending with respect to the determination that he is not so entitled,*

*such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits continued for an additional period beginning with the first month beginning after the date of the enactment of this paragraph for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (I) the month preceding the month in which a decision is made after such a hearing, or (II) the month preceding the month in which no such request for review or a hearing is pending.*

*“(B)(i) If an individual elects to have the payment of his benefits continued for an additional period under subparagraph (A), and the final decision of the Secretary affirms the determination that he is*



not entitled to such benefits, any benefits paid under this title pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this title, except as otherwise provided in clause (ii).

"(ii) If the Secretary determines that the individual's appeal of his termination of benefits was made in good faith, all of the benefits paid pursuant to such individual's election under subparagraph (A) shall be subject to waiver consideration under the provisions of subsection (b)(1).

"(C) The provisions of subparagraphs (A) and (B) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made on or after the date of the enactment of this paragraph, or prior to such date but only on the basis of a timely request for review or for a hearing."

(c)(1) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, conduct a study concerning the effect which the enactment and continued operation of section 223(g) of the Social Security Act is having on expenditures from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund, and the rate of appeals to administrative law judges of unfavorable determinations relating to disability or periods of disability.

(2) The Secretary shall submit the results of the study under paragraph (1), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than July 1, 1986.

#### QUALIFICATIONS OF MEDICAL PROFESSIONALS EVALUATING MENTAL IMPAIRMENTS

SEC. 8. (a) Section 221 of the Social Security Act is amended by inserting after subsection (g) the following new subsection:

"(h) An initial determination under subsection (a), (c), (g), or (i) that an individual is not under a disability, in any case where there is evidence which indicates the existence of a mental impairment, shall be made only if the Secretary has made every reasonable effort to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable residual functional capacity assessment."

(b) Section 1614(a)(3) of such Act (as amended by section 4 of this Act) is further amended by adding at the end thereof the following new subparagraph:

"(H) In making determinations with respect to disability under this title, the provisions of section 221(h) shall apply in the same manner as they apply to determinations of disability under title II."

(c) The amendments made by this section shall apply to determinations made after 60 days after the date of the enactment of this Act.



## CONSULTATIVE EXAMINATIONS; MEDICAL EVIDENCE

SEC. 9. (a)(1) Section 221 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(j) The Secretary shall prescribe regulations which set forth, in detail—

"(1) the standards to be utilized by State disability determination services and Federal personnel in determining when a consultative examination should be obtained in connection with disability determinations;

"(2) standards for the type of referral to be made; and

"(3) procedures by which the Secretary will monitor both the referral processes used and the product of professionals to whom cases are referred.

Nothing in this subsection shall be construed to preclude the issuance, in accordance with section 553(b)(A) of title 5, United States Code, of interpretive rules, general statements of policy, and rules of agency organization relating to consultative examinations if such rules and statements are consistent with such regulations."

(2) The Secretary of Health and Human Services shall prescribe regulations required under section 221(j) of the Social Security Act not later than 180 days after the date of the enactment of this Act.

(b)(1) Section 223(d)(5) of the Social Security Act is amended by inserting "(A)" after "(5)" and by adding at the end thereof the following new subparagraph:

"(B) In making any determination with respect to whether an individual is under a disability or continues to be under a disability, the Secretary shall consider all evidence available in such individual's case record, and shall develop a complete medical history of at least the preceding twelve months for any case in which a determination is made that the individual is not under a disability. In making any determination the Secretary shall make every reasonable effort to obtain from the individual's treating physician (or other treating health care provider) all medical evidence, including diagnostic tests, necessary in order to properly make such determination, prior to evaluating medical evidence obtained from any other source on a consultative basis."

(2) The amendments made by this subsection shall apply to determinations made on or after the date of the enactment of this Act.

## UNIFORM STANDARDS

SEC. 10. (a) Section 221 of the Social Security Act (as amended by section 9 of this Act) is further amended by adding at the end thereof the following new subsection:

"(k)(1) The Secretary shall establish by regulation uniform standards which shall be applied at all levels of determination, review, and adjudication in determining whether individuals are under disabilities as defined in section 216(i) or 223(d).

"(2) Regulations promulgated under paragraph (1) shall be subject to the rulemaking procedures established under section 553 of title 5, United States Code."

(b) Section 1614(a)(3)(H) of such Act (as added by section 8 of this Act and amended by section 3 of this Act) is further amended by

striking out "sections 221(h) and 223(d)(5)" and inserting in lieu thereof "sections 221(h), 221(k), and 223(d)(5)".

#### PAYMENT OF COSTS OF REHABILITATION SERVICES

SEC. 11. (a)(1) The first sentence of section 222(d)(1) of the Social Security Act is amended—

(A) by striking out "into substantial gainful activity"; and

(B) by striking out "which result in their performance of substantial gainful activity which lasts for a continuous period of nine months" and inserting in lieu thereof the following: "(i) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for a continuous period of nine months, (ii) in cases where such individuals receive benefits as a result of section 225(b) (except that no reimbursement under this paragraph shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month in which his or her entitlement to such benefits ceases, whichever first occurs), and (iii) in cases where such individuals, without good cause, refuse to continue to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation".

(2) The second sentence of section 222(d)(1) of such Act is amended by striking out "of such individuals to substantial gainful activity" and inserting in lieu thereof "of an individual to substantial gainful activity, the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation,".

(b)(1) The first sentence of section 1615(d) of such Act is amended by striking out "if such services result in their performance of substantial gainful activity which lasts for a continuous period of nine months" and inserting in lieu thereof the following: "(1) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for a continuous period of nine months, (2) in cases where such individuals receive benefits as a result of section 1631(a)(6) (except that no reimbursement under this subsection shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month with which his or her entitlement to such benefits ceases, whichever first occurs), and (3) in cases where such individuals, without good cause, refuse to continue to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation".

(2) The second sentence of section 1615(d) of such Act is amended by inserting after "The determination" the following: "that the vocational rehabilitation services contributed to the successful return of an individual to substantial gainful activity, the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in

such a manner as to preclude successful rehabilitation, and the determination”.

(c) The amendments made by this section shall apply with respect to individuals who receive benefits as a result of section 225(b) or section 1631(a)(6) of the Social Security Act, or who refuse to continue to accept rehabilitation services or fail to cooperate in an approved vocational rehabilitation program, in or after the first month following the month in which this Act is enacted.

#### ADVISORY COUNCIL STUDY

SEC. 12. (a) The Secretary of Health and Human Services shall appoint the members of the next Advisory Council on Social Security pursuant to section 706 of the Social Security Act prior to June 1, 1985.

(b)(1) The Advisory Council shall include in its review and report, studies and recommendations with respect to the medical and vocational aspects of disability, including studies and recommendations relating to—

(A) the effectiveness of vocational rehabilitation programs for recipients of disability insurance benefits or supplemental security income benefits;

(B) the question of using specialists for completing medical and vocational evaluations at the State agency level in the disability determination process, including the question of requiring, in cases involving impairments other than mental impairments, that the medical portion of each case review (as well as any applicable assessment of residual functional capacity) be completed by an appropriate medical specialist employed by the State agency before any determination can be made with respect to the impairment involved;

(C) alternative approaches to work evaluation in the case of applicants for benefits based on disability under title XVI and recipients of such benefits undergoing reviews of their cases, including immediate referral of any such applicant or recipient to a vocational rehabilitation agency for services at the same time he or she is referred to the appropriate State agency for a disability determination;

(D) the feasibility and appropriateness of providing work evaluation stipends for applicants for and recipients of benefits based on disability under title XVI in cases where extended work evaluation is needed prior to the final determination of their eligibility for such benefits or for further rehabilitation and related services;

(E) the standards, policies, and procedures which are applied or used by the Secretary of Health and Human Services with respect to work evaluations in order to determine whether such standards, policies, and procedures will provide appropriate screening criteria for work evaluation referrals in the case of applicants for and recipients of benefits based on disability under title XVI; and

(F) possible criteria for assessing the probability that an applicant for or recipient of benefits based on disability under title XVI will benefit from rehabilitation services, taking into



consideration not only whether the individual involved will be able after rehabilitation to engage in substantial gainful activity but also whether rehabilitation services can reasonably be expected to improve the individual's functioning so that he or she will be able to live independently or work in a sheltered environment.

(2) For purposes of this subsection, "work evaluation" includes (with respect to any individual) a determination of—

(A) such individual's skills,

(B) the work activities or types of work activity for which such individual's skills are insufficient or inadequate,

(C) the work activities or types of work activity for which such individual might potentially be trained or rehabilitated,

(D) the length of time for which such individual is capable of sustaining work (including, in the case of the mentally impaired, the ability to cope with the stress of competitive work), and

(E) any modifications which may be necessary, in work activities for which such individual might be trained or rehabilitated, in order to enable him or her to perform such activities.

(c) The Advisory Council may convene task forces of experts to consider and comment upon specialized issues.

#### QUALIFYING EXPERIENCE FOR APPOINTMENT OF CERTAIN STAFF ATTORNEYS TO ADMINISTRATIVE LAW JUDGE POSITIONS

SEC. 13. The Secretary of Health and Human Services shall, within 120 days after the date of enactment of this Act, submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on actions taken by the Secretary to establish positions which enable staff attorneys to gain the qualifying experience and quality of experience necessary to compete for the position of administrative law judge under section 3105 of title 5, United States Code.

#### SUPPLEMENTAL SECURITY INCOME BENEFITS FOR INDIVIDUALS WHO PERFORM SUBSTANTIAL GAINFUL ACTIVITY DESPITE SEVERE MEDICAL IMPAIRMENT

SEC. 14. (a) Section 201(d) of the Social Security Disability Amendments of 1980 is amended by striking out "shall remain in effect only for a period of three years after such effective date" and inserting in lieu thereof "shall remain in effect only through June 30, 1987".

(b) Section 1619 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(c) The Secretary of Health and Human Services and the Secretary of Education shall jointly develop and disseminate information, and establish training programs for staff personnel, with respect to the potential availability of benefits and services for disabled individuals under the provisions of this section. The Secretary of Health and Human Services shall provide such information to individuals who are applicants for and recipients of benefits based on disability under this title and shall conduct such programs for the staffs of the district offices of the Social Security Administra-



tion. The Secretary of Education shall conduct such programs for the staffs of the State Vocational Rehabilitation agencies, and in cooperation with such agencies shall also provide such information to other appropriate individuals and to public and private organizations and agencies which are concerned with rehabilitation and social services or which represent the disabled.”.

#### FREQUENCY OF CONTINUING ELIGIBILITY REVIEWS

SEC. 15. The Secretary of Health and Human Services shall promulgate final regulations, within 180 days after the date of the enactment of this Act, which establish the standards to be used by the Secretary in determining the frequency of reviews under section 221(i) of the Social Security Act. Until such regulations have been issued as final regulations, no individual may be reviewed more than once under section 221(i) of the Social Security Act.

#### DETERMINATION AND MONITORING OF NEED FOR REPRESENTATIVE PAYEE

SEC. 16. (a) Section 205(j) of the Social Security Act is amended by inserting “(1)” after “(j)” and by adding at the end thereof the following new paragraphs:

“(2) Any certification made under paragraph (1) for payment to a person other than the individual entitled to such payment must be made on the basis of an investigation, carried out either prior to such certification or within forty-five days after such certification, and on the basis of adequate evidence that such certification is in the interest of the individual entitled to such payment (as determined by the Secretary in regulations). The Secretary shall ensure that such certifications are adequately reviewed.

“(3)(A) In any case where payment under this title is made to a person other than the individual entitled to such payment, the Secretary shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Secretary shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

“(B) Subparagraph (A) shall not apply in any case where the other person to whom such payment is made is a parent or spouse of the individual entitled to such payment who lives in the same household as such individual. The Secretary shall require such parent or spouse to verify on a periodic basis that such parent or spouse continues to live in the same household as such individual.

“(C) Subparagraph (A) shall not apply in any case where the other person to whom such payment is made is a State institution. In such cases, the Secretary shall establish a system of accountability monitoring for institutions in each State.

“(D) Subparagraph (A) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the other person to whom such payment is made is the institution.

“(E) Notwithstanding subparagraphs (A), (B), (C), and (D), the Secretary may require a report at any time from any person receiv-

ing payments on behalf of another, if the Secretary has reason to believe that the person receiving such payments is misusing such payments.

“(4)(A) The Secretary shall make an initial report to each House of the Congress on the implementation of paragraphs (2) and (3) within 270 days after the date of the enactment of this paragraph.

“(B) The Secretary shall include as a part of the annual report required under section 704, information with respect to the implementation of paragraphs (2) and (3), including the number of cases in which the payee was changed, the number of cases discovered where there has been a misuse of funds, how any such cases were dealt with by the Secretary, the final disposition of such cases, including any criminal penalties imposed, and such other information as the Secretary determines to be appropriate.”

(b) Section 1631(a)(2) of such Act is amended by inserting “(A)” after “(2)” and by adding at the end thereof the following new subparagraphs:

“(B) Any determination made under subparagraph (A) that payment should be made to a person other than the individual or spouse entitled to such payment must be made on the basis of an investigation, carried out either prior to such determination or within forty-five days after such determination, and on the basis of adequate evidence that such determination is in the interest of the individual or spouse entitled to such payment (as determined by the Secretary in regulations). The Secretary shall ensure that such determinations are adequately reviewed.

“(C)(i) In any case where payment is made under this title to a person other than the individual or spouse entitled to such payment, the Secretary shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Secretary shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

“(ii) Clause (i) shall not apply in any case where the other person to whom such payment is made is a parent or spouse of the individual entitled to such payment who lives in the same household as such individual. The Secretary shall require such parent or spouse to verify on a periodic basis that such parent or spouse continues to live in the same household as such individual.

“(iii) Clause (i) shall not apply in any case where the other person to whom such payment is made is a State institution. In such cases, the Secretary shall establish a system of accountability monitoring for institutions in each State.

“(iv) Clause (i) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the other person to whom such payment is made is the institution.

“(v) Notwithstanding clauses (i), (ii), (iii), and (iv), the Secretary may require a report at any time from any person receiving payments on behalf of another, if the Secretary has reason to believe that the person receiving such payments is misusing such payments.

“(D) The Secretary shall make an initial report to each House of the Congress on the implementation of subparagraphs (B) and (C) within 270 days after the date of the enactment of this subpara-

graph. The Secretary shall include in the annual report required under section 704, information with respect to the implementation of subparagraphs (B) and (C), including the same factors as are required to be included in the Secretary's report under section 205(j)(4)(B).”.

(c)(1) Section 1632 of the Social Security Act is amended by inserting “(a)” after “Sec. 1632.” and by adding at the end thereof the following new subsection:

“(b)(1) Any person or other entity who is convicted of a violation of any of the provisions of paragraphs (1) through (4) of subsection (a), if such violation is committed by such person or entity in his role as, or in applying to become, a payee under section 1631(a)(2) on behalf of another individual (other than such person's eligible spouse), in lieu of the penalty set forth in subsection (a)—

“(A) upon his first such conviction, shall be guilty of a misdemeanor and shall be fined not more than \$5,000 or imprisoned for not more than one year, or both; and

“(B) upon his second or any subsequent such conviction, shall be guilty of a felony and shall be fined not more than \$25,000 or imprisoned for not more than five years, or both.

“(2) In any case in which the court determines that a violation described in paragraph (1) includes a willful misuse of funds by such person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.

“(3) Any person or entity convicted of a felony under this section or under section 208 may not be certified as a payee under section 1631(a)(2).”.

(2) Section 208 of such Act is amended by adding at the end thereof the following unnumbered paragraphs:

“Any person or other entity who is convicted of a violation of any of the provisions of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a certified payee under section 205(j) on behalf of another individual (other than such person's spouse), upon his second or any subsequent such conviction shall, in lieu of the penalty set forth in the preceding provisions of this section, be guilty of a felony and shall be fined not more than \$25,000 or imprisoned for not more than five years, or both. In the case of any violation described in the preceding sentence, including a first such violation, if the court determines that such violation includes a willful misuse of funds by such person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.

“Any individual or entity convicted of a felony under this section or under section 1632(b) may not be certified as a payee under section 205(j).”.

(d) The amendments made by this section shall become effective on the date of the enactment of this Act, and, in the case of the amendments made by subsection (c), shall apply with respect to violations occurring on or after such date.



## MEASURES TO IMPROVE COMPLIANCE WITH FEDERAL LAW

SEC. 17. (a)(1) Section 221(b)(1) of the Social Security Act is amended to read as follows:

“(b)(1)(A) Upon receiving information indicating that a State agency may be substantially failing to make disability determinations in a manner consistent with regulations and other written guidelines issued by the Secretary, the Secretary shall immediately conduct an investigation and, within 21 days after the date on which such information is received, shall make a preliminary finding with respect to whether such agency is in substantial compliance with such regulations and guidelines. If the Secretary finds that an agency is not in substantial compliance with such regulations and guidelines, the Secretary shall, on the date such finding is made, notify such agency of such finding and request assurances that such agency will promptly comply with such regulations and guidelines.

“(B)(i) Any agency notified of a preliminary finding made pursuant to subparagraph (A) shall have 21 days from the date on which such finding was made to provide the assurances described in subparagraph (A).

“(ii) The Secretary shall monitor the compliance with such regulations and guidelines of any agency providing such assurances in accordance with clause (i) for the 30-day period beginning on the day after the date on which such assurances have been provided.

“(C) If the Secretary determines that an agency monitored in accordance with clause (ii) of subparagraph (B) has not substantially complied with such regulations and guidelines during the period for which such agency was monitored, or if an agency notified pursuant to subparagraph (A) fails to provide assurances in accordance with clause (i) of subparagraph (B), the Secretary shall, within 60 days after the date on which a preliminary finding was made with respect to such agency under subparagraph (A), (or within 90 days after such date, if, at the discretion of the Secretary, such agency is granted a hearing by the Secretary on the issue of the noncompliance of such agency) make a final determination as to whether such agency is substantially complying with such regulations and guidelines. Such determination shall not be subject to judicial review.

“(D)(i) If the Secretary makes a final determination pursuant to subparagraph (C) with respect to any agency that the agency is not substantially complying with such regulations and guidelines, the Secretary shall, as soon as possible but not later than 180 days after the date of such final determination, make the disability determinations referred to in subsection (a)(1), complying with the requirements of paragraph (3) to the extent that such compliance is possible within such 180-day period. In order to carry out this subparagraph, the Secretary shall, as the Secretary finds necessary, exceed any applicable personnel ceilings and waive any applicable hiring restrictions. In addition, to the extent feasible within the 180-day period after the final determination, the Secretary, in conjunction with the Secretary of Labor, shall assure the statutory protections of State agency employees not hired by the Secretary.

“(ii) During the 180-day period specified in clause (i), the Secretary shall take such actions as may be necessary to assure that any



case with respect to which a determination referred to in subsection (a)(1) was made by an agency, during the period for which such agency was not in substantial compliance with the applicable regulations and guidelines, was decided in accordance with such regulations and guidelines.”.

(2) Section 221(a)(1) of such Act is amended by striking out “subsection (b)(1)” and inserting in lieu thereof “subsection (b)(1)(C)”.

(3)(A) Section 221(b)(3)(A) of such Act is amended by striking out “The Secretary” and inserting in lieu thereof “Except as provided in subparagraph (D)(i) of paragraph (1), the Secretary”.

(B) Section 221(b)(3)(B) of such Act is amended by striking out “The Secretary” and inserting in lieu thereof “Except as provided in subparagraph (D)(i) of paragraph (1), the Secretary”.

(4) Section 221(d) of such Act is amended by striking out “Any individual” and inserting in lieu thereof “Except as provided in subsection (b)(1)(D), any individual”.

(b) The amendments made by subsection (a) of this section shall become effective on the date of the enactment of this Act and shall expire on December 31, 1987. The provisions of the Social Security Act amended by subsection (a) of this section (as such provisions were in effect immediately before the date of the enactment of this Act) shall be effective after December 31, 1987.

#### SEPARABILITY

SEC. 18. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

And the Senate agree to the same.

That the Senate recede from its amendment to the title of the bill.

DAN ROSTENKOWSKI,  
J.J. PICKLE,  
ANDREW JACOBS, Jr.,  
RICHARD A. GEPHARDT,  
JIM SHANNON,  
WYCHE FOWLER, Jr.,  
HAROLD FORD,  
BARBER B. CONABLE, Jr.,  
BILL ARCHER,  
WILLIS D. GRADISON, Jr.,  
CARROLL CAMPBELL,  
*Managers on the Part of the House.*

BOB DOLE,  
BOB PACKWOOD,  
BILL ROTH,  
JOHN C. DANFORTH,  
RUSSELL B. LONG,  
LLOYD BENTSEN,  
D.P. MOYNIHAN,  
*Managers on the Part of the Senate.*

## JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3755) to amend titles II and XVI of the Social Security Act to provide for reform in the disability determination process, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment to the text of the bill struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

### 1. STANDARD OF REVIEW FOR TERMINATION OF DISABILITY BENEFITS

#### *Present law*

To be eligible for disability benefits, a person must be unable, by reason of a medically determinable impairment expected to last at least 12 months or to end in death, to perform any substantial gainful activity (SGA) that exists in the national economy, considering his or her age, education and work experience. The impairment must be "demonstrable by medically acceptable clinical and laboratory diagnostic techniques." This definition applies both to new applicants and to beneficiaries whose eligibility is being reviewed. No other statutory standards exist for the review of beneficiaries.

#### *House bill*

Establishes a standard for reviewing eligibility of disability beneficiaries that allows benefits to be terminated only if there is substantial evidence that the beneficiary can perform SGA as a result of (a) medical improvement in his disabling condition, or (b) medical or vocational therapy technological or advances, as shown by new medical evidence and new assessment of residual functional capacity, or (c) vocational therapy or (d) a less disabling impairment than originally thought, as shown by new or improved diagnostic techniques or evaluations.

Benefits could also be terminated if evidence on the record at the time of the earlier determination or new evidence shows that the

prior determination was either clearly erroneous or fraudulently obtained, or that the beneficiary is performing SGA.

In cases where there is no evidence to support the prior decision (i.e. a lost file) the Secretary would not be precluded from securing additional medical reports in order to reconstruct that decision.

Title XVI is amended to provide that the same standard of review shall apply to SSI recipients (except that the exclusions which allow termination as the result of medical or vocational therapy (described in (b) and (c) above) do not apply to individuals receiving section 1619 special benefits).

No provisions for date of implementing regulations or expiration.

*Effective date.* Applies to all cases involving disability determinations pending in the Department or in Court on the date of enactment or initiated on or after that date.

### *Senate amendment*

Benefits may be terminated if beneficiary can perform SGA unless the Secretary finds there has been no medical improvement. If the evidence establishes that there has been no medical improvement (other than improvement which is not related to his ability to work), benefits may be terminated only if Secretary can show (a) beneficiary has benefited from medical or vocational therapy or technology, (b) new or improved diagnostic or evaluative techniques indicate impairment(s) is not as disabling as believed at time of last decision, (c) a prior determination was fraudulently obtained, or (d) there is demonstrated substantial reason to believe a prior determination of eligibility was erroneous.

Benefits may be terminated for performance of SGA or if the individual fails, without good cause, to cooperate in the review or follow prescribed treatment, or cannot be located.

In making determination, Secretary shall consider the evidence in the file as well as any additional information concerning claimant's current or prior condition secured by Secretary or provided by claimant.

In the case of a finding relating to medical improvement, provides that burden of proof is on claimant. In other words, for benefits to be continued on this basis, individual must state and evidence in file must show that medical condition is same as or worse than at time of last decision (or, if there is medical improvement, it is not related to work ability).

Title XVI is amended to provide that the same procedures shall apply to SSI recipients (except that the provision requiring termination on the grounds that an individual is engaging in SGA does not apply to recipients of section 1619 special benefits).

Implementing regulations must be issued within 6 months of enactment. Provision expires December 31, 1987.

*Effective date.*—Applies to disability reviews initiated on or after date of enactment, to all individuals with claims properly pending in the administrative appeals process as of enactment, and to certain court cases. All individual litigants and named members of a class action who have cases properly pending in court as of May 16, 1984, and all individuals who properly request court review of a decision of the Secretary made during the period from March 15, 1984 until 60 days after enactment, would be remanded to the Sec-



retary for redetermination under the new standard. Also the case of any individual who exhausted the administrative appeals process, was an unnamed member of a properly pending class action certified prior to May 16, 1984, and had been notified of the Secretary's final decision on or after a date 60 days prior to the filing of the court action, would be remanded to the Secretary. The Secretary would notify the individual that he had 60 days to request review of his claim under the new standard. If the individual did not request review, the provision would not apply and the Secretary's determination would not be subject to further administrative or judicial review.

The provision would not apply to any case for which the Secretary made a final determination prior to May 16, 1984, and which was not included in the above categories. Such determination would not be subject to further administrative or judicial review.

Applies the provision authorizing payments pending appeal (See item 6) to any individual whose case is remanded by a court under this section and if applicable, who timely requested redetermination. These interim payments would begin with the payment for the month in which the individual elects continued payments. If the individual is ultimately found eligible, full retroactive benefits would be provided. If he is found ineligible, the interim payments would be subject to recovery as overpayments.

### *Conference agreement*

#### *(A) Standard of review*

The conference agreement follows the House bill with amendments:

(a) remove causal links between change in medical condition and ability to perform SGA, as follows: the Secretary may terminate disability benefits on the basis that the person is no longer disabled only if there is substantial evidence which demonstrates that (i) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the individual's ability to work) and (ii) the individual is now able to engage in SGA. Make similar changes in wording of exception for advances in medical or vocational therapy or technology (add "related to ability to work") and exception for vocational therapy (add "related to ability to work");

(b) substitute for the House language concerning termination of benefits if evidence in the file or newly obtained shows that the prior determination was clearly erroneous, the requirement that the Secretary may terminate benefits in the absence of medical improvement if substantial evidence (which may be evidence on the record at the time any prior determination of such entitlement to disability benefits was made, or newly obtained evidence which relates to that determination) shows that a prior determination was in error;

(c) allow termination of benefits also where the individual is engaging in SGA (except where he is eligible under section 1619), cannot be located, or fails, without good cause to cooper-



ate in the review or to follow prescribed treatment which could be expected to restore his ability to engage in SGA;

(d) substitute for House language on Secretary obtaining additional medical reports, the requirement that any determination under this section shall be made on the basis of all the evidence available in the individual's case file, including new evidence concerning the individual's prior or current condition which is presented by the individual or secured by the Secretary;

(e) add the requirement that any determination made under this section shall be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual's condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the claimant has previously been determined to be disabled;

(f) add requirement that regulations must be promulgated within 6 months of enactment.

The conference agreement attempts to strike a balance between the concern that a medical improvement standard could be interpreted to grant claimants a presumption of eligibility, which might make it extremely difficult to remove ineligible individuals from the benefit rolls, and the concern that the absence of an explicit standard of review or some alternative standard could be interpreted to imply a presumption of ineligibility or to allow arbitrary termination decisions, which might lead to many individuals being improperly removed from the rolls.

The conferees intend that determinations of continuing eligibility should be made on a basis which is as nearly neutral as possible. The Secretary should reach conclusions on the basis of the weight of the evidence, as applied to the statutory standards specified in this amendment, and without any preconception or presumption as to whether the individual is or is not disabled.

Under the conference agreement, the Secretary would apply the rules specified in the amendment, reaching conclusions under them on the basis of the weight of the evidence. The conference agreement eliminates language in the Senate bill referring to the burden of proof being on the claimant in the case of medical improvement determinations. It also eliminates Senate language with respect to the burden of proof on the Secretary in making other determinations under this provision. This agreement eliminates any confusion that might result from shifting burdens of proof, and is intended to subject determinations under this provision to the same requirements currently established in Section 223(d) of the Social Security Act. That is, the claimant's obligations to establish the existence of his disability with regard to the CDI proceeding are the same as his obligations with regard to an initial determination. Similarly, elimination of this language should not be interpreted as placing a burden of proof on the Secretary. Rather, the language in question was dropped solely to clarify the intent that decisions are to be made on the basis of the weight of the evidence and to avoid any misinterpretation with respect to the role of the claimant and the Secretary in pursuing evidence or with respect to the non-adversarial nature of the proceeding.

*(B) Effective date*

The conference agreement follows the House bill with respect to the 3-year sunset.

The conference agreement follows the Senate on formulation of effective date with amendments:

(1) The medical improvement standard in these amendments will only apply to:

(i) determinations made by the Secretary on or after the date of enactment; (ii) determinations by the Secretary not yet final on enactment and with respect to which a request for administrative review is made in conformity with the time limits, exhaustion requirements and other provisions of section 205 of the Act and regulations of the Secretary; (iii) determinations with respect to which a request for judicial review was pending on September 19, 1984 involving an individual litigant or a member of a class action identified by name in such pending action on such date (this section refers to individuals identified by name as members of a class action. By this, the legislation means those individuals identified in the pleadings as class representatives); (iv) determinations in which a request for judicial review is made by an individual litigant of a final decision by the Secretary made during the period beginning 60 days prior to the date of enactment and ending on the date of enactment (cases in iii and iv will be remanded to Secretary for determination); (v) unnamed plaintiffs in class action suits certified as of September 19, 1984, as follows: the cases shall be remanded to the Secretary; the Secretary shall notify all plaintiffs via certified mail that they have 120 days from the date of receiving the notice to file a request with the Secretary for review under these amendments.

(2) Add requirement that no class action shall be certified after September 19, 1984, which raises the issue of whether an individual who has had his entitlement to benefits terminated prior to September 19, 1984 should not have had such entitlement terminated without consideration of whether there has been medical improvement in such individual's condition since the time of a prior determination that the individual was under a disability.

The conference agreement provides for an opportunity for re-determination under the new standard of all claimants who are members of class actions which have been certified as of September 19, 1984. However, this is in no way intended to express a view, one way or another, as to whether those classes would otherwise have been found to be properly certified in accordance with the exhaustion and finality requirements of section 205 of the Social Security Act. The conference agreement provides that the existing certified classes will be covered by the new standard in order to resolve the existing controversy over the medical improvement issue in the courts.

This provision prohibits the certification of any class action after September 9, 1984 which raises the issue of whether a medical im-

provement standard should have been applied in a determination of eligibility made prior to the enactment of these amendments.

The section provides that certain specified court cases involving medical improvement be remanded to the Secretary for review under the medical improvement standard established in this Act. Cases pending in court which do not involve medical improvement would not, of course, be remanded to the Secretary for such a review.

The conferees recognize that there will be considerable administrative difficulty in identifying and notifying individuals who are eligible to have their cases redetermined as a result their being unnamend members of class actions certified prior to September 19, 1984. Notwithstanding the administrative difficulty of this task, the conferees expect the Secretary of Health and Human Services to act expeditiously in notifying these individuals of the provisions of this act which are applicable to them.

*(C) Benefit payments during remand*

The conference agreement follows the Senate amendment.

*(D) Retroactive benefits*

The conference agreement follows the Senate amendment.

## 2. EVALUATION OF PAIN

*Present law*

There is no statutory provision concerning the evaluation of pain (or the use of subjective allegations of pain) in determining eligibility for disability benefits. The definition of disability requires that the person be unable to work by reason of a "medically determinable impairment"—one which results from "anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques."

By regulation, subjective allegations of symptoms of impairments, such as pain, cannot alone be evidence of disability. There must be medical signs or other findings which show there is a medical condition that could be reasonably expected to produce those symptoms and that is severe enough to be disabling.

*House bill*

Requires the Secretary to conduct a study in conjunction with the National Academy of Sciences on the use of subjective evidence of pain in making disability determinations, and on the state of the art of preventing, reducing or coping with pain. A report on the study is due to the Committees on Ways and Means and Finance no later than April 1, 1985.

*Effective date.*—On enactment.

*Senate amendment*

Requires Secretary to appoint 12-member commission consisting of a significant number of medical professionals involved in the study of pain, and representatives from the fields of law, administration of disability insurance programs, and other appropriate fields of expertise to study the use of pain in evaluation of disabil-



ity. Report due to Committees on Ways and Means and Finance no later than December 31, 1986.

Includes in statute the present regulatory policy on the use of evidence of pain in evaluation of disability. Includes title XVI conforming amendment.

*Effective date.*—Statutory provision applies to determinations made prior to January 1, 1988.

#### *Conference agreement*

The conference agreement follows the Senate amendment with amendments:

(a) The study is to be done in consultation with the National Academy of Sciences, and the report is to be filed by December 31, 1985; and

(b) The statutory language providing for an interim standard for evaluation of pain is amended to more accurately reflect current policies.

*Effective date.*—The interim standard will be in effect only for determinations made prior to January 1, 1987.

### 3. MULTIPLE IMPAIRMENTS

#### *Present law*

There is no statutory provision concerning the consideration of the combined effects of a number of different impairments. The definition of disability requires a finding of a medically determinable impairment of sufficient severity to prevent the person from doing not only his previous work but also any other kind of work that exists in the national economy, considering his age, education and work experience. By regulation, the combined effects of unrelated impairments are considered only if all are severe (and expected to last 12 months). As elaborated in rulings, "inasmuch as a nonsevere impairment is one which does not significantly limit basic work-related functions, neither will a combination of two or more such impairments significantly restrict the basic work-related functions needed to do most jobs".

#### *House bill*

Requires the Secretary, in making a determination of whether a person's impairments are of such severity that he or she is unable to engage in substantial gainful activity, to consider the combined effects of all of a person's impairments, regardless of whether any impairment by itself is of such severity. Includes title XVI conforming amendment.

*Effective date.*—Applies to all determinations pending in the Department or in Court on the date of enactment, or initiated after that date.

#### *Senate amendment*

Same, except clarifies that the requirement applies to the determination of whether the individual has a combination of impairments which are *medically* severe without regard to age, education, or work experience. Includes title XVI conforming amendment.



*Effective date.*—Applies to all determinations made on or after January 1, 1985.

#### *Conference agreement*

The conference agreement substitutes alternative language for the provisions in both bills.

Under current policies, if a determination is made that a claimant's impairment is not severe, the consideration of the claim ends at that point. In cases where an individual has several impairments, none of which satisfy the standard for "severe," the individual is judged not disabled without any further evaluation of cumulative impact of his impairments. The conferees believe this policy may preclude realistic assessment of those cases involving individuals who have several impairments which in combination may be disabling. The conference agreement provides, therefore, that in determining whether an individual's impairment or impairments are so severe as to prevent him from engaging in substantial gainful activity, consideration must be given to the combined effect of all the individual's impairments without regard to whether any single impairment considered separately would limit the individual's ability.

The conferees also believe that in the interests of reasonable administrative flexibility and efficiency, a determination that an individual is not disabled may be based on a judgment that an individual has no impairment, or that the medical severity of his impairment or combination of impairments is slight enough to warrant a presumption, even without a full evaluation of vocational factors, that the individual's ability to perform SGA is not seriously affected. The current "sequential evaluation process" allows such a determination and the conferees do not intend to either eliminate or impair the use of that process. The conferees note that the Secretary has stated that it is her plan to reevaluate the current criteria for nonsevere impairments and expect that the Secretary will report to the Committees on the results of this evaluation.

*Effective date.*—Effective for all determinations made on or after the first day of the month beginning 30 days after the date of enactment.

#### 4. MORATORIUM ON MENTAL IMPAIRMENT REVIEWS

##### *Present law*

Under the Disability Amendments of 1980, all DI beneficiaries with nonpermanent impairments must be reviewed at least once every 3 years to assess their continuing eligibility for benefits. Individuals with permanent impairments may be reviewed less frequently. Presently, there is no distinction in the law between the rate of review for individuals with physical and mental impairments.

Under a Secretarial initiative (of June 7, 1983), periodic eligibility reviews have been suspended for certain mental impairment cases involving functional psychotic disorders, pending a revision, with the help of outside mental health experts, of the criteria used for determining disability. Under a subsequent Secretarial action

(announced April 13, 1984), all periodic eligibility reviews have been suspended temporarily.

### *House bill*

Requires publication within 9 months of enactment of revised mental impairment criteria in the Listing of Impairments that are designed to realistically evaluate the person's ability to engage in SGA in a competitive workplace environment, taking account of the recommendations of the disability advisory council (section 304). Delays periodic review of mentally impaired individuals until these revisions are made. The delay would apply to cases on which an initial decision had not been made by the date of enactment and to those cases where an initial decision was made prior to the date of enactment and a timely appeal was pending on or after June 7, 1983.

Periodic reviews where (1) fraud was involved or (2) the individual was engaging in SGA, would continue to be done. SSA could continue to review medical diary cases and make initial determinations but would subsequently redetermine the cases under the revised criteria. If a new decision were favorable, it would take effect as of the time of the first determination. Mentally impaired persons who received an unfavorable initial or continuing eligibility determination between March 1, 1981 and enactment of the bill and who reapplied for benefits within 12 months of enactment would be deemed to have reapplied at the time of the unfavorable determination for the purpose of establishing a period of disability during the period covered by the prior determination, but not for benefit purposes; benefits would be payable only for the twelve months prior to the date of the new application. The provisions also apply to title XVI.

*Effective date.*—On enactment.

### *Senate amendment*

Similar, except requires publication of revisions within 90 days after enactment, and reapplication provision applies to people who received an unfavorable determination since June 7, 1983 rather than March 1, 1981.

*Effective date.*—On enactment.

### *Conference agreement*

The conference agreement follows the House provision with amendments to require the Secretary to publish the revised Listing of Impairments within 120 days of enactment.

## 5. PRE-TERMINATION NOTICE AND RIGHT TO PERSONAL APPEARANCE

### *Present law*

A person whose initial claim for disability benefits is denied or who is determined after review not to be disabled may request a reconsideration of that decision within 60 days. In the past, reconsideration has been a paper review of the evidentiary record including any new evidence submitted by the claimant, conducted by the State agency. Under a provision of P.L. 97-455, enacted January 12, 1983, disability beneficiaries determined not to be medically

eligible for benefits must be given opportunity for a face-to-face evidentiary hearing at reconsideration. Such hearings may be provided by the State agency or by the Secretary.

Individuals found ineligible for benefits at reconsideration may request a face-to-face evidentiary hearing before an administrative law judge. The next level of appeal is to SSA's Appeals Council, and finally, to a Federal court.

### *House bill*

Revises determination process for beneficiaries undergoing periodic review in medical cessation cases, to provide for a face-to-face evidentiary review with State agency (upon request of the beneficiary within 30 days) after a preliminary unfavorable decision by the State. If, after the evidentiary interview (or paper review if the beneficiary requests review without the personal interview), the State agency denies benefits, the beneficiary could appeal to the ALJ and succeeding appeals levels. The reconsideration level would be abolished for these review cases.

Requires the Secretary to establish demonstration projects in at least 5 States using this same procedure for initial disability claims, with a report to the Committees on Ways and Means and Finance on the results due no later than April 1, 1985.

The provisions also apply to title XVI.

*Effective date.*—Revised determination process applies to periodic reviews on or after January 1, 1985; demonstration projects to be initiated as soon as practicable after enactment.

### *Senate amendment*

Requires demonstration projects on providing pretermination face-to-face interviews in disability cessation cases in lieu of face-to-face evidentiary hearings at reconsideration. Report due to Committees on Ways and Means and Finance April 1, 1986.

Requires the Secretary to notify individuals upon initiating a periodic eligibility review that such review could result in termination of benefits and that medical evidence may be submitted.

The provisions also apply to title XVI.

*Effective date.*—On enactment. Demonstration projects to be established as soon as practicable after date of enactment.

### *Conference agreement*

The conference agreement follows the Senate amendment with respect to the current reconsideration hearing process, the demonstration projects concerning face-to-face pre-termination interviews for continuing disability review issues at the initial rather than the reconsideration level, and the requirement for notification of the possibility of benefit termination as a result of review with an amendment to require the report to Congress on December 31, 1986. The conference agreement follows the House bill with respect to demonstrational projects concerning face-to-face pre-denial interviews for initial disability claims, with an amendment to require the report to Congress on December 31, 1986.

*Effective date.*—On enactment. Demonstration projects to be established as soon as practicable after date of enactment.



## 6. CONTINUATION OF BENEFITS DURING APPEAL

### *Present law*

Disability benefits are payable for the month as of which the beneficiary is determined to be ineligible and for the 2 months succeeding. Benefits do not generally continue during appeal.

Under a temporary provision in P.L. 97-455 (as modified by P.L. 98-118), individuals notified of a medical termination decision could elect to have DI benefits and medicare coverage continued during appeal—through the month preceding the month of the ALJ hearing decision. These additional DI benefits are subject to recovery as overpayments if the initial termination decision is upheld (unless they qualify for waiver under the standard provisions for waiver of overpayments). This provision does not apply to terminations made after December 6, 1983. Benefits are last payable under this provision for June 1984 (i.e., the July 1984 benefit check).

### *House bill*

Permanently extends provision (with technical changes) for continuation of DI and SSI benefits during appeal. Requires the Secretary to report to the Committees on Ways and Means and Finance by July 1, 1986, on the impact of the provision on the OASDI trust funds and on appeals to ALJs.

*Effective date.*—On enactment.

### *Senate amendment*

Extends the provision for continued payment of DI and SSI benefits during appeal to termination decisions made prior to June 1, 1986. (Last month of payments would be for January 1987, i.e., the February 1987 check.)

*Effective date.*—On enactment.

### *Conference agreement*

The conference agreement follows the House bill with amendments to:

- (i) Make permanent the payments through the ALJ hearing for SSI recipients;
- (ii) Make the payments through ALJ hearing for DI beneficiaries for termination decisions through December 1987, and benefit payments through June, 1988.

## 7. QUALIFICATIONS OF MEDICAL PROFESSIONALS EVALUATING MENTAL IMPAIRMENTS

### *Present law*

There is no statutory requirement concerning qualifications of persons making disability determinations. Under current policy, the State disability agency team making eligibility decisions must consist of a State agency medical consultant (physician) and a State agency disability examiner, both of whom must sign the disability determination.



*House bill*

Requires that a qualified psychiatrist or psychologist complete the medical portion of any applicable sequential evaluation and residual functional capacity assessment in cases involving mental impairments before a determination may be made that an individual is not disabled.

*Effective date.*—On enactment.

*Senate amendment*

Same except modified to require only that every reasonable effort be made to use qualified psychiatrist or psychologist. Also, specifically amends title XVI to make the provision applicable to SSI determinations.

*Effective date.*—On enactment.

*Conference agreement*

The conference agreement follows the Senate bill with an amendment to change the effective date to 60 days after enactment. The conferees note that if the Secretary is unable to assure adequate compensation in order to obtain the services of qualified psychiatrists or psychologists because of impediments at the State level, it would be within the Secretary's authority to contract directly for such services.

## 8. STANDARDS FOR CONSULTATIVE EXAMINATIONS/MEDICAL EVIDENCE

*Present law*

Consultative exams (CE's) are medical exams purchased by the State agency from physicians and other qualified health professionals outside the agency. By regulation, CE's may be sought to secure additional information necessary to make a disability determination or to check conflicting information. Evidence obtained through a CE is considered in conjunction with all other medical and non-medical evidence submitted in connection with a disability claim.

There are currently no statutory or regulatory standards requiring CE's in particular cases, or requiring any standard procedures to be followed in the purchase of CE's.

The SSI statute includes a cross-reference to this provision. Any changes in title II will therefore also be made for SSI.

*House bill*

Requires the Secretary to prescribe regulations which set forth standards for when a CE should be obtained, the type of referral to be made and the procedures for monitoring CE's and the referral process. Permits non-regulatory rules and statements of policy relating to CE's to be issued if they are consistent with the regulations.

*Effective date.*—On enactment.

*Senate amendment*

Requires the Secretary to make every reasonable effort to obtain necessary medical evidence from an individual's treating-physician prior to seeking a consultative examination.

Also, requires consideration of all evidence in the case record and development of complete medical history over at least the preceding 12-month period for individuals applying for benefits or undergoing review.

*Effective date.*—On enactment.

### *Conference agreement*

The conference agreement follows the House bill with respect to the provisions requiring the Secretary to set forth standards for consultative examinations. The conference agreement follows the Senate amendment with an amendment requiring the Secretary to make every reasonable effort to obtain necessary medical evidence from treating physicians prior to evaluating medical evidence obtained from any other source on a consultative basis.

## 9. ADMINISTRATIVE PROCEDURE AND UNIFORM STANDARDS

### *Present law*

The guidelines for making social security disability determinations and all other social security eligibility determinations are contained in the Social Security Act, regulations, social security rulings and the POMS (the Program Operating Manual System):

*Regulations*, or substantive rules, have the force and effect of law and are therefore binding on all levels of adjudication—state agencies, administrative law judges, SSA's Appeals Council, and the Federal Courts.

The Administrative Procedure Act (APA) requirements do not apply to social security programs because of a general exception for benefit programs. On a voluntary basis, however, SSA issues its regulations in accordance with the public notice and comment rulemaking requirements of the APA.

*Rulings* consist of interpretative policy statements issued by the Commissioner and other interpretations of law and regulations, selected decisions of the Federal courts, ALJs, the Appeals Council and selected opinions of the General Counsel. Rulings often provide detailed elaboration of the regulations helpful for public understanding. By regulation, the rulings are binding on all levels of administrative adjudication.

*The POMS* is a compilation of detailed policy instructions and step-by-step procedures for the use of State agency and SSA personnel in developing and adjudicating claims. The POMS is not binding on the Administrative Law Judges, Appeals Council or Courts.

### *House bill*

Requires publication under APA public notice and comment rule-making procedures of all OASDI and SSI regulations on matters relating to benefits. Requires that only those rules issued under Sections b-e of Section 553 of the APA shall be binding at any level of review.

*Effective date.*—On enactment.

### *Senate amendment*

Requires publication of regulations setting forth uniform standards for DI and SSI disability determinations under APA procedures. These rules would be binding at all levels of adjudication.

*Effective date.*—On enactment.

### *Conference agreement*

The conference agreement follows the Senate amendment. While it is not required in the legislation, the conferees urge the Secretary to publish under APA public notice and comment rulemaking procedures all OASDI and SSI regulations which relate to benefits.

## 10. ACQUIESCENCE OR NON-ACQUIESCENCE IN COURT OF APPEALS DECISIONS

### *Present law*

Claimants for benefits under the Social Security Act may appeal State agency denials through several levels of administrative appeal. A claimant who wishes to continue to pursue appeal may next turn to the Federal district court with jurisdiction over his or her claim. The district court reviews the record as compiled by the agency to determine whether substantial evidence existed for the agency's decision. The district court's decision may be appealed, by the claimant or the Secretary, to the Circuit Court with jurisdiction, and ultimately to the Supreme Court (which may or may not agree to hear the appeal).

Under the Federal judicial system, decisions by a Circuit Court of Appeals constitute binding case law to be followed by all district courts in that circuit. (District courts are not bound by the case law of other circuits and often develop contrary case law on the same issue.)

In general, if two circuits rule differently on a particular issue, the Supreme Court will review the issue to settle the dispute, although frequently the Court will decline to review for an extended period of time if the issue is not ripe for disposition, or if it is not of sufficient importance to warrant immediate attention. If a particular policy is found by the Supreme Court to be unconstitutional, or contrary to the statute, that decision is binding on the agency.

Most social security cases decided in the Federal courts have little value as precedent for SSA decisions, since most reversals of agency determinations rest on the lack of substantial evidence for the agency's position. However, in some instances, the court's opinion is based on matter of a statutory interpretation.

The Social Security Administration abides by the final judgments of Federal courts with respect to the individuals in particular cases. It does not, however, consider itself bound with respect to nonlitigants as far as adopting as agency policy, either in the circuit or nationwide, the interpretation underlying a Circuit Court's decision. If the decision of a Circuit Court is contrary to the Secretary's interpretation of the Social Security Act and regulations, SSA, like some other Federal agencies, issues a ruling stating that it will not adopt the court's decision as agency policy. There are



currently 7 such rulings of nonacquiescence by the Social Security Administration.

### *House bill*

Requires that a decision of a Circuit Court of Appeals interpreting title II of the Social Security Act or its regulations in a manner different from prevailing policy be appealed to the Supreme Court or the Secretary must apply the interpretation underlying that decision as agency policy in the circuit. If the Supreme Court denies review, circuit-wide acquiescence with that interpretation would be required until the Supreme Court ruled on the issue. Includes title XVI conforming amendment.

*Effective date.*—On enactment, with respect to all circuit court decisions made on or after the date of enactment, and with respect to circuit court decisions for which the Secretary still has an opportunity to request review by the Supreme Court.

### *Senate amendment*

Requires SSA to notify Congress and print in the *Federal Register* (within 90 days after decision date, or on the last date available for appeal, whichever is later) an explanation of the agency's decision to acquiesce or not acquiesce in decisions of the Circuit Courts relating to interpretation of the Social Security Act or of regulations issued under the Act. In cases where the Secretary is acquiescing, the reporting requirement would apply only to significant decisions.

States that nothing in the section shall be interpreted as sanctioning any decision of the Secretary not to acquiesce in the decision of a circuit court.

*Effective date.*—Applies to Court decisions rendered after the date of enactment.

### *Conference agreement*

The conference agreement deletes both the House and Senate language. The conferees do not intend that the agreement to drop both provisions be interpreted as approval of "non-acquiescence" by a federal agency to an interpretation of a U.S. Circuit Court of Appeals as a general practice. On the contrary, the conferees note that questions have been raised about the constitutional basis of non-acquiescence and many of the conferees have strong concerns about some of the ways in which this policy has been applied, even if constitutional. Thus, the conferees urge that a policy of non-acquiescence be followed only in situations where the Administration has initiated or has the reasonable expectation and intention of initiating the steps necessary to receive a review of the issue in the Supreme Court.

The conferees reaffirm the congressional intent that the Secretary resolve policy conflicts promptly in order to achieve consistent uniform administration of the program. This objective may be achieved in at least two ways other than non-acquiescence when the agency is faced with conflicting interpretations of the meaning and intent of the Social Security Act: either to appeal the issue to the Supreme Court, or to seek a legislative remedy from the Congress.



When there are court rulings which the Secretary believes are inconsistent with the meaning and intent of the law, the Secretary should diligently pursue appropriate appeals channels on an expeditious basis. By refusing to apply circuit court interpretations and by not promptly seeking review by the Supreme Court, the Secretary forces beneficiaries to re-litigate the same issue over and over again in the circuit, at substantial expense to both beneficiaries and the federal government. This is clearly an undesirable consequence. The conferees also feel that in addition to the practical administrative problems which may be raised by non-acquiescence, the legal and Constitutional issues raised by non-acquiescence can only be settled by the Supreme Court. The conferees therefore urge the Administration to seek a resolution of this issue.

The conferees recognize that the realities of litigation do not make it appropriate or feasible to appeal every adverse decision with which the Secretary continues to disagree. In such instances, however, the conferees strongly insist that Congress' judgment as to the appropriate policy should prevail. The conferees expect the Secretary to propose what she believes to be appropriate remedial legislation for congressional consideration.

It is clearly undesirable to have major differences in statutory interpretation between the Secretary and the courts remain unresolved for a protracted period of time. The conferees believe this legislation takes a major step toward removing the obstacles to resolution by clarifying the statutory language and congressional intent.

## 11. PAYMENT OF COSTS OF REHABILITATION SERVICES

### *Present law*

Presently, States are reimbursed for vocational rehabilitation (VR) services provided to DI and SSI recipients which result in their performance of substantial gainful activity (SGA) for at least 9 months. For such individuals, services are reimbursable for as long as they are in VR and receiving cash benefits. If the individual is reviewed and found to have medically recovered while in VR, cash benefits may continue (under Sections 225(b) and/or 1631(a)(6) of the Social Security Act, work-incentive provisions enacted in 1980). The State agency is reimbursed for these VR services on the same basis as applies to other beneficiaries—only if the beneficiary is returned to SGA for 9 months.

### *House bill*

Allows reimbursement to State agencies for costs of VR services provided to individuals receiving DI benefits under Section 225(b) who medically recover while in VR, and to those receiving SSI disability who are found ineligible for benefits by reason of medical recovery (whether or not receiving SSI under Section 1631(a)(6)). Reimbursable services would be those provided prior to his or her working at SGA for 9 months, or prior to the month benefit entitlement ends, whichever is earlier, and would not be contingent upon the individual working at SGA for at least 9 months. Also provides for reimbursement in cases where DI or SSI disability recipient does not meet the requirement of successful return to SGA because

he refuses without good cause to continue in or cooperate with the VR program.

*Effective date.*—For individual receiving benefits as a result of section 225(b) (or who are no longer entitled to SSI benefits because of medical recovery) for months after the month of enactment.

#### *Senate amendment*

Same, except does not pay for services to those who fail to cooperate or refuse to continue participation in VR, and does not apply to SSI program.

*Effective date.*—For services rendered to individuals who receive benefits under Section 225(b) for months after the month of enactment.

#### *Conference agreement*

The conference agreement follows the House bill with technical amendments to correct the SSI provision, and an amendment to the effective date to apply the provision in the first month following the month after enactment.

The conferees expect that the Secretary will reimburse the State agencies for vocational rehabilitation services provided to a beneficiary who refuses without good cause to continue or to cooperate in a vocational rehabilitation program in such a way as to preclude his successful rehabilitation only in those cases in which the Secretary also suspends that person's disability benefits because of such refusal.

## 12. ADVISORY COUNCIL ON MEDICAL ASPECTS OF DISABILITY

### *Present law*

Section 706 of the Social Security Act provides for the appointment of a 13-member quadrennial advisory council on social security. It is responsible for studying all aspects of the OASI, DI, HI, and SMI programs. The councils are comprised of members of the public.

The next advisory council is scheduled to be appointed in 1985 and to make its final report on December 31, 1986.

There are no requirements in the law pertaining to the creation of advisory councils to deal specifically with disability matters.

### *House bill*

Requires the Secretary to appoint, within 60 days after enactment, a 10-member advisory council on the medical aspects of disability. This would be in addition to the regular quadrennial council. The council, to be composed of independent medical and vocational experts and the Commissioner of SSA *ex officio*, would provide advice and recommendations to the Secretary on disability policies, standards, and procedures. Any recommendations would be published in the Secretary's annual reports.

In addition, Section 307 of the bill requires this advisory council to study alternative approaches to work evaluation for SSI applicants and recipients and the effectiveness of VR services for SSI recipients.

*Effective date.*—On enactment. Authority for the council expires December 31, 1985.

*Senate amendment*

Directs next quadrennial advisory council on social security to study the medical and vocational aspects of disability using *ad hoc* panels of experts where appropriate. The study shall include: (1) alternative approaches to work evaluation for recipients of SSI; (2) the effectiveness of vocational rehabilitation programs for DI and SSI recipients; and (3) the question of using specialists for completing medical and vocational evaluations at the State agency level in the disability determination process.

*Effective date:* Requires Secretary to appoint members by June 1, 1985.

*Conference agreement*

The conference agreement follows the Senate amendment with amendments providing in detail the issues to be studied by the Advisory Council.

### 13. STAFF ATTORNEYS

*Present law*

Qualifications for administrative law judge (ALJ) positions are set by the Office of Personnel Management (OPM). To qualify for SSA's GS-15 ALJ position, an applicant must have at least 1 year of qualifying experience at or comparable to the GS-14 grade level in Federal service. Staff attorneys in SSA's Office of Hearings and Appeals (OHA) have the appropriate type of qualifying experience. However, there are no GS-14 positions as OHA staff attorneys; GS-13 is the highest staff attorney position. Prior to a recent decision by OPM, staff attorneys did not have qualifying experience at the necessary grade level. On May 9, 1984, OPM revised this criteria to permit applicants to qualify with 2 years of qualifying experience at the GS-13 level. No GS-14 experience is necessary.

*House bill*

Requires the Secretary to establish enough GS-13 and GS-14 attorney advisor positions to enable otherwise qualified staff attorneys to compete for ALJ positions. A 90-day interim progress report and a 180-day final report by the Secretary would be required.

*Effective date.*—On enactment.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement follows the House bill with an amendment substituting a requirement for a report to the House Committee on Ways and Means and the Senate Committee on Finance on the actions taken by the Secretary to establish positions to enable staff attorneys to gain qualifying experience of the quality necessary to compete for ALJ positions.



In view of the recent actions by OPM and SSA, the conferees do not believe it is necessary to statutorily require that GS13 and GS14 SSA staff attorney positions be established so as to permit those attorneys to qualify for GS15 ALJ positions. Congress recognizes that such changes are critical in order to ensure the continued availability of qualified attorneys and ALJ's and urges the Secretary to take all reasonable steps to see that the OPM actions result in SSA attorneys becoming qualified for GS15 ALJ positions.

The conferees are concerned, however, upon review of the new examination announcement, that there may not exist within OHA positions in which a staff attorney can now serve and obtain the experience needed to meet the "quality of experience" requirements (in particular, the requirement that cases be listed which demonstrate knowledge, skills and abilities in the rules of evidence and trial procedures, and in decision-making ability).

The conferees expect that, if necessary, the Secretary will establish positions which enable staff attorneys to gain the qualifying experience and quality of experience necessary to compete for ALJ positions.

#### 14. SSI BENEFITS FOR PERSONS WORKING DESPITE SEVERE IMPAIRMENTS

##### *Present law*

Under the SSI program, an individual who is able to engage in substantial gainful activity (SGA) cannot become eligible for SSI disability payments. Prior to the enactment of a provision in 1980, a disabled SSI recipient generally ceased to be eligible for SSI when his or her earnings exceeded the level which demonstrates SGA—\$300 monthly.

Under Section 1619(a) of the Social Security Act, enacted in the Disability Amendments of 1980, severely disabled SSI recipients who work and earn more than SGA may receive a special payment and thereby maintain medicaid coverage and social services. The amount of the special payment is equal to the SSI benefit they would have been entitled to receive under the regular SSI program were it not for the SGA eligibility cut-off. Special benefit status is thus terminated when the individual's earnings exceed the amount which would cause the Federal SSI payment to be reduced to zero (i.e., the "break-even" level which is currently \$713 per month for an individual with earnings). Under Section 1619(b), medicaid and social services may continue beyond this level, until earnings reach a level where the Secretary finds: (1) that termination of eligibility for these benefits would not seriously inhibit the individual's ability to continue his employment, or (2) the individual's earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the cash and other benefits that would be available in the absence of earnings.

Section 1619 expired on December 31, 1983. It is being continued administratively under demonstration project authority to those people who were eligible for SSI as of that date.

##### *House bill*

Extends Sections 1619 (a) and (b) through June 30, 1986.



In addition, requires the Secretaries of HHS and Education to establish training programs for staff personnel in SSA district offices and State VR agencies, and disseminate information to SSI applicants, recipients, and potentially interested public and private organizations.

*Effective date.*—On enactment, retroactive to January 1, 1984.

*Senate amendment*

Same, except extended through June 30, 1987.

*Conference agreement*

The conference agreement follows the Senate amendment.

## 15. FREQUENCY OF CONTINUING ELIGIBILITY REVIEWS

*Present law*

Under a provision enacted in 1980, all DI beneficiaries, except those with permanent impairments, must generally be reviewed at least once every 3 years to assess their continuing eligibility.

Under a provision enacted in 1983 (P.L. 97-455), the Secretary is provided the authority to modify this 3-year review requirement on a state-by-state basis. The appropriate number of cases for review is to be based on the backlog of pending cases, the number of applications for benefits, and staffing levels.

On April 13, 1984, Secretary Heckler announced a temporary, nationwide moratorium on periodic eligibility reviews.

*House bill*

No provision.

*Senate amendment*

Requires Secretary to promulgate regulations establishing standards for determining the frequency of continuing eligibility reviews. Final regulations must be issued within 6 months of enactment. Until these regulations are issued, no individual may have more than one periodic review.

*Effective date.*—On enactment.

*Conference agreement*

The conference agreement follows the Senate amendment.

## 16. MONITORING OF REPRESENTATIVE PAYEES FOR SOCIAL SECURITY AND SSI BENEFICIARIES

*Present law*

The Secretary may appoint a representative payee for an individual entitled to social security or SSI benefits when it appears to be in the individual's best interest. Payees must be appointed for individuals receiving SSI who are addicted to drugs or alcohol.

A payee convicted of misusing a social security beneficiary's funds is guilty of a felony, punishable by imprisonment for not more than 5 years and/or a fine of not more than \$5,000. A payee convicted of misusing an SSI recipient's funds is guilty of a misde-

meanor, punishable by imprisonment for not more than 1 year and/or a fine of not more than \$1,000.

There are no statutory requirements or restrictions on the selection and monitoring of payees.

#### *House bill*

No provision.

#### *Senate amendment*

Requires Secretary to: (1) evaluate qualifications of prospective payee either prior to or within 45 days following certification, (2) establish a system of annual accountability monitoring for cases in which payments are made to someone other than a parent or spouse living in the same household as the entitled individual, and (3) report to Congress within 6 months of enactment on implementation of the new system and report annually on the number of cases of misused funds and disposition of such cases.

The fine for a first offense by a payee convicted of misusing SSI benefits would be increased to not more than \$5,000 and, for both programs, a second offense by a payee would be made a felony punishable by imprisonment for not more than 5 years and/or a fine of not more than \$25,000. Individuals convicted of a felony under this provision could not be selected as a payee.

*Effective date.*—On enactment.

#### *Conference agreement*

The conference agreement follows the Senate amendment with amendments to require a report to Congress within 270 days after the date of enactment.

While the conference agreement recognizes that it may be necessary to appoint a representative payee prior to completion of the investigation required by the provision, the managers believe that the Secretary should do so cautiously. In particular, the managers direct the Secretary to establish procedures under which large lump-sum payments of retroactive benefits will not ordinarily be paid to new representative payees until the investigation of their suitability has been successfully completed. These procedures should, however, allow for reasonable exceptions where the funds are urgently needed, for example, to avoid eviction or to meet major medical needs.

Where State institutions serve as representative payees for their residents, the annual reporting requirements of the conference agreement do not apply. This exemption, however, is not designed to shield institutional payees from accountability but rather to allow the Secretary the flexibility to establish more appropriate and effective systems of auditing the use of social security funds by such institutions. The managers wish to make clear their intention that the Secretary implement a thorough and comprehensive audit methodology to assure that Social Security Act benefits for residents of State institutions are not misused. These onsite reviews would be expected to involve, at a minimum, discussions with institution staff, an audit of a sample of residents accounts in each institution and on-ward interviews and observations to ensure that benefits are being properly used. At a minimum, each such institu-

tion should be audited once every three years. This 3-year cycle will allow the Secretary to audit one-third of such institutions each year—thus permitting a more thorough audit than would be possible on an annual basis. The managers further expect that the initial report on the implementation of this section of the bill will include a full exposition of the audit procedures which the Secretary will utilize in monitoring State institutions which act as representative payees.

## 17. FAIL-SAFE

### *Present law*

The main source of funding for the DI program is that portion of the social security tax allocated by law for disability. At present, the disability portion of the tax is 1 percent (employee and employer combined). It is scheduled to rise to 1.2 percent in the 1990's and to 1.42 percent thereafter. If revenues from the tax exceed amounts needed for benefit payments, the excess is placed in the trust fund reserve. If revenues fall short of the amount needed, the reserve is drawn on to make up the difference. (To make timely benefit payments it is necessary to have at least one month's benefit payments in reserve at the beginning of each month—8 to 9 percent of annual expenditures. Reserves must be sufficient to meet this percentage requirement at the beginning of each month notwithstanding any decline in revenues or increase in expenditures during the year.)

To help assure continued benefit payments over the next few years in the event of adverse conditions, the social security legislation enacted in 1983 authorized interfund borrowing for calendar years 1983-1987. In addition, the 1983 legislation required the OASDI Board of Trustees, whenever it determines that trust fund reserves may become less than 20 percent, to immediately submit to Congress a report setting forth its recommendations for statutory adjustments necessary to restore the reserve ratio. This report to the Congress by the Trustees must provide specific information as to the extent to which benefits would have to be reduced, payroll taxes increased, or some combination thereof, in order to restore the trust fund reserve ratio.

### *House bill*

No provision.

### *Senate amendment*

Requires the Secretary to adjust disability insurance benefit increases as necessary to prevent the DI trust fund balance from falling below a defined threshold. The Secretary would be required to notify the Congress by July 1 in any year in which the amount of the DI trust fund at the start of the next year is projected to be less than 20 percent of the year's expenditures. If Congress took no action, the Secretary must scale back the next cost-of-living increase for disability insurance beneficiaries as necessary to keep the fund balance from falling below 20 percent. If further necessary to keep the fund from falling below 20 percent, the Secretary



would also be required to scale back the increase in the benefit formula used to determine new benefit awards the following year.

*Effective date.*—On enactment.

### *Conference agreement*

The conference agreement follows the House bill.

## 18. MEASURES TO IMPROVE COMPLIANCE WITH FEDERAL LAW

### *Present law*

The States are responsible, on a voluntary basis, for determining whether individuals are disabled under the meaning of the Social Security Act. Under the law, States administering the program are required to make disability determinations in accord with Federal law and the standards and guidelines established by the Department of Health and Human Services. All benefit payments and administrative costs of the States making these determinations are financed or reimbursed by the Disability Insurance Trust Fund.

The law provides for the Secretary to commence actions to take over the disability determination process if a State fails to follow Federal rules. A series of procedural steps must be complied with before such Federal assumption can be accomplished. The Secretary may not commence making disability determinations earlier than 6 months after: (1) finding, after notice and opportunity for hearing, that a State agency is substantially out of compliance with Federal law; (2) developing all procedures to implement a plan for partial or complete assumption of the disability determinations which grants hiring preference to the State employees; and (3) the Secretary of Labor determines that the State has made fair and equitable arrangements to protect the interests of displaced employees.

Prior to the Secretary's announcement in April 1984 of a temporary nationwide moratorium on periodic reviews, several States on their own initiative were failing to conduct eligibility reviews in accordance with Federal law and standards. Eighteen States were operating under court-ordered eligibility criteria or pending court order.

### *House bill*

No provision.

### *Senate amendment*

Requires the Secretary to federalize disability determinations in a State within 6 months of finding that the State is not in substantial compliance with Federal law and standards. (Such finding must be made within 16 weeks of the time a State's failure to comply first comes to the attention of the Secretary. During this 16-week period, at the discretion of the Secretary, a hearing could be afforded to the State.) The Secretary would be required, to the extent feasible, to meet the requirements of present law regarding the transfer of functions. Provision expires December 31, 1987.

*Effective date.*—On enactment.



### *Conference agreement*

The conference agreement follows the Senate bill with an amendment to require the Secretary to waive any applicable personnel ceilings and other restrictions in carrying out the provisions. Under the conference agreement, protections are being given to State agency employees. If the Secretary assumes the functions of the Disability Determinations Agency, then preference must be given in hiring to agency employees who are capable of performing the requisite duties. The conferees further intend that the Secretary should make every effort throughout the 180 day period to comply with the requirements in the law concerning the hiring of State employees and the protection of their interests in the event of the Secretary assuming the functions of the State agency.

### 19. SEPARABILITY CLAUSE

The Conference agreement includes a separability clause stating that the constitutional invalidity of any provision of the bill shall not affect the other provisions of the bill.

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## Finder's Aid

P.L. 98-617 (98 Stat. 3294) Approved November 8, 1984  
 "Amendment of Part A of Title XVIII of the Social Security Act"

<u>Subject</u>	<u>S.S. Act Section</u>	<u>P.L. Section</u>	<u>98 Stat.</u>	<u>H. Rep. 98-1100</u>
Foster Care Payments - Effect on Titles XIX and XX Eligibility - Effective Date	472(h)	4(c)(2)	3297	--
Foster Care Payments - Limitation on Payment to States - 1985	474(b)(1)	4(a)(1)	3296	--
Foster Care Payments - Exemption to Limitation on Payment to States - 1985 (technical amendment)	474(b)(2)(A)(iii)	4(a)(2)(A)	3296	--
Foster Care Payments - Exemption to Limitation on Payment to States - 1985 (technical amendment)	474(b)(2)(A)(iv)	4(a)(2)(B)	3296	--
Foster Care Payments - Exemption to Limitation on Payment to States	474(b)(2)(A)(v) New	4(a)(2)(C)	3296	--
Foster Care Payments - Limitation on Payment to States - Contingent on Appropriations - 1985	474(b)(2)(B)	4(a)(1)	3296	--
Foster Care Payments - State Allotment - 1985	474(b)(4)(B)	4(a)(1)	3296	--
Foster Care Payments - State Allotment - 1985	474(b)(5)(A)	4(a)(3)(A)	3296	--
Foster Care Payments - State Allotment - 1985	474(b)(5)(A)(ii)	4(a)(3)(B)	3297	--

<u>Subject</u>	<u>S.S. Act Section</u>	<u>P.L. Section</u>	<u>98 Stat.</u>	<u>H. Rep. 98-1100</u>
Foster Care Payments - Reimbursement of State for Expenditures - 1985	474(c)(1)	4(b)	3297	--
Foster Care Payments - Reimbursement of State for Expenditures - 1985	474(c)(2)	4(b)	3297	--
Medicare - Hospice Care - Routine Home Care - 1985 (technical amendment)	1814(i)(1)(A) As redesignated	1(a)(1)	3294	1, 6
Medicare - Hospice Care - Routine Home Care - 1985	1814(i)(1)(B) New	1(a)(2)	3294	1
Medicare - Hospice Care - Routine Home Care and Other Services after 1985	1814(i)(1)(C) New	1(a)(2)	3294	1
Medicare - Private Home Health Agencies Catering to Low-Income Patients (conforming amendment)	1814(k)(2)	3(b)(1)(A)	3295	--
Medicare - Home Health Agencies - 80% of Fair Compensation (conforming amendment)	1814(k)(2)	3(b)(1)(B)	3295	--
Medicare - Payment of Benefits - Private Providers Catering to Low-Income Patients (conforming amendment)	1833(a)(2)(A)	3(b)(2)	3295	--
Medicare - Payment for Clinical Laboratory Tests (technical correction)	1833(h)(5)(C)	3(b)(3)	3295	--
Medicare - Monthly Premium Amount (technical correction)	1839(f)(2)(A)	3(b)(4)(A)	3295	--
Medicare - Monthly Premium Amount (technical correction)	1839(f)(2)(A0)	3(b)(4)(B)	3295	--
Medicare - Teaching Physicians - Reasonable Charge (technical correction)	1842(b)(7)(A)(ii)	3(b)(5)(A)	3295	--



<u>Subject</u>	<u>S.S. Act Section</u>	<u>P.L. Section</u>	<u>98 Stat.</u>	<u>H. Rep. 98-1100</u>
Medicare - Teaching Physicians - Unanimous Agreement - Rate of Payment (technical amendment)	1842(b)(7)(A)	3(b)(5)(B)	3296	--
Medicare - Teaching Physicians - Unanimous Agreement - Rate of Payment (technical amendment)	1842(b)(7)(B)(iii) New	3(b)(6)	3296	--
Medicare - Definition of Physician - Podiatrist (citation correction)	1861(r)(3)	3(b)(7)	3296	--
Medicare - End Stage Renal Disease (technical correction)	1881(b)(11)	3(b)(8)	3296	--
Medicare - Classification of Certain Rural Hospitals. - Date of Publication of Criteria	1886(d)(5)(C)(i)	3(b)(9)	3296	--
Medicare - Medical Review of Mental Patients (technical correction)	1902(a)(26)(C)	3(b)(10)	3296	--



PUBLIC LAW 98-617—NOV. 8, 1984

**AMENDMENT OF PART A OF TITLE XVIII  
OF THE SOCIAL SECURITY ACT**

Public Law 98-617  
98th Congress

An Act

Nov. 8, 1984  
[H.R. 5386]

To amend part A of title XVIII of the Social Security Act with respect to the payment rates for routine home care and other services included in hospice care.

Aged Persons.  
Health.  
42 USC 1395f.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That (a) section 1814(i)(1) of the Social Security Act (42 U.S.C. 1395(i)(1)) is amended—

(1) by inserting “(A)” after “(i)(1)”, and

(2) by adding at the end the following new subparagraphs:

“(B) Notwithstanding subparagraph (A), the rate of payment per day for routine home care furnished during fiscal year 1985 shall be \$53.17.

“(C) With respect to care and services furnished on or after October 1, 1985, the Secretary shall, not less often than annually, review and make appropriate adjustments to the payment rate for routine home care and the payment rates for other services included in hospice care based on the costs that are reasonable and related to the costs of furnishing such care and services. The Secretary shall report to Congress on October 1 each year on such review and such adjustments and on the adequacy of the rates under this paragraph to ensure participation by an adequate number of hospice programs under this title.”.

Report.

Effective date.  
42 USC 1395f  
note.

(b) The amendments made by this Act shall apply to routine home care and other services included in hospice care furnished on or after October 1, 1984.

PUBLIC PENSION OFFSET PROVISIONS

97 Stat. 131.  
42 USC 402 note.

SEC. 2. (a)(1) Section 337(b) of the Social Security Amendments of 1983 is amended by striking out “to individuals who initially become eligible” and all that follows and inserting in lieu thereof “for months after June 1983.”.

Effective date.  
42 USC 402 note.

(2) The amendments made by this subsection shall apply to benefits payable under title II of the Social Security Act for months beginning after the month of enactment of this Act.

42 USC 402 note.

(b)(1) Section 334(g)(1)(A) of the Social Security Amendments of 1977 is amended—

(A) by inserting “(i)” after “(A)”; and

(B) by inserting before the semicolon at the end thereof the following: “, or (ii) who would have been eligible for such a monthly periodic benefit (within the meaning of paragraph (2)) before the close of such 60-month period, except for a requirement which postponed eligibility (as so defined) for such monthly periodic benefit until the month following the month in which all other requirements were met”.

(2) Section 334(h)(1) of such Amendments (as amended by section 7 of Public Law 97-455) is amended—

(A) by inserting “(A)” after “(1)”; and



(B) by inserting before the semicolon at the end thereof the following: “, or (B) who would have been eligible for such a monthly periodic benefit (within the meaning of subsection (g)(2)) before the close of June 1983, except for a requirement which postponed eligibility (as so defined) for such monthly periodic benefit until the month following the month in which all other requirements were met”.

(3) The amendments made by this subsection shall apply with respect to benefits payable under title II of the Social Security Act for months beginning after the month of enactment of this Act.

Effective date.  
42 USC 402 note.

#### TECHNICAL AMENDMENTS

SEC. 3. (a)(1) Section 2307(a)(1) of the Deficit Reduction Act of 1984 is amended by striking out “1842(b)(7)(A)” and inserting in lieu thereof “1842(b)(7)”.

*Ante*, p. 1073.

(2) Section 2326(a) of the Deficit Reduction Act of 1984 is amended by striking out “1816(a)(1)” and inserting in lieu thereof “1816(a)”.

*Ante*, p. 1087.

(3) Section 2354(b)(1) of the Deficit Reduction Act of 1984 is amended by striking out “last sentence of sections 1814(a) and the last sentence of section 1835(a)” and inserting in lieu thereof “the third sentence of section 1814(a) and the fourth sentence of section 1835(a)”.

*Ante*, p. 1100.

(4) Section 2354(b)(23) of the Deficit Reduction Act of 1984 is amended by striking out “1861(v)(1)(E)(ii)” and inserting in lieu thereof “1861(v)(1)(E)”.

(5) Section 2354(c)(3)(B)(i) of the Deficit Reduction Act of 1984 is amended by inserting “under” before “section”.

(6) Section 2363(b) of the Deficit Reduction Act of 1984 is amended by striking out “1903” and inserting in lieu thereof “1903(g)”.

*Ante*, p. 1105.

(7) Section 2373(b) of the Deficit Reduction Act of 1984 is amended by striking out paragraph (6).

*Ante*, p. 1111.

(b)(1) Section 1814(k)(2) of the Social Security Act, as added by section 2321(a)(2) of the Deficit Reduction Act of 1984, is amended—

*Ante*, p. 1084.

(A) by inserting after “public home health agency” the following: “, or by another home health agency which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this paragraph),” and

(B) by inserting “80 percent of” before “the amount”.

(2) Section 1833(a)(2)(A) of the Social Security Act is amended by inserting after “public provider of services” the following: “, or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this provision),”.

42 USC 1395f.

(3) Section 1833(h)(5)(C) of the Social Security Act, as amended by section 2303(d) of the Deficit Reduction Act of 1984, is amended by inserting a comma after “1842(b)(6)(B)”.

*Ante*, p. 1064.

(4) Section 1839(f)(2)(A) of the Social Security Act, as added by section 2302(b) of the Deficit Reduction Act of 1984, is amended—

*Ante*, p. 1063.

(A) by striking out “for that January after the deduction” and inserting in lieu thereof “for that December after the deduction”; and

(B) by striking out “for that November” and inserting in lieu thereof “for that December”.

(5) Section 1842(b)(7)(A) of the Social Security Act, as amended by section 2307 of the Deficit Reduction Act of 1984, is amended—

*Ante*, p. 1073.

(A) in clause (ii), by striking out “the amount of the payment exceeds the reasonable charge for the services (with the customary charge determined consistent with subparagraph (B))” and inserting in lieu thereof “the payment is based upon a reasonable charge for the services in excess of the customary charge as determined in accordance with subparagraph (B)”; and

(B) by striking out the last sentence thereof.

(6) Section 1842(b)(7)(B) of such Act, as amended by section 2307 of the Deficit Reduction Act of 1984, is amended by adding at the end thereof the following new clause:

*Ante*, p. 1073.

Hospitals.

“(iii) If all the teaching physicians in a hospital agree to have payment made for all of their physicians’ services under this part furnished to patients in such hospital on the basis of an assignment described in paragraph (3)(B)(ii) or under the procedure described in section 1870(f)(1), the customary charge for such services shall be equal to 90 percent of the prevailing charges paid for similar services in the same locality.”.

(7) Section 1861(r)(3) of the Social Security Act, as amended by section 2341 of the Deficit Reduction Act of 1984, is amended by striking out “under subsections (k) and (m) and sections 1814(a) and 1835” and inserting in lieu thereof “under subsections (k), (m), and (p)(1) of this section and sections 1814(a), 1832(a)(2)(F)(ii), and 1835”.

*Ante*, p. 1094.

*Ante*, p. 1086.

(8) Paragraph (11) of section 1881(b) of the Social Security Act, added by section 2323(c) of the Deficit Reduction Act of 1984, is amended by aligning its left margin flush so as to align its left margin with that of paragraph (10).

*Ante*, p. 1076.

(9) Section 1886(d)(5)(C)(i) of the Social Security Act, as amended by section 2311(a) of the Deficit Reduction Act of 1984, is amended by striking out “30 days after the date of the enactment of this Act” and inserting in lieu thereof “August 17, 1984”.

*Ante*, p. 1109.

(10) Section 1902(a)(26) of the Social Security Act, as amended by section 2368(b) of the Deficit Reduction Act of 1984, is amended by indenting subparagraph (C) two additional ems to the right so as to align its left margin with the left margin of subparagraph (A) of that section.

Effective date.

(c) The amendments made by this section shall be effective as if they had been originally included in the Deficit Reduction Act of 1984.

*Ante*, p. 494.

#### FOSTER CARE PROVISIONS

42 USC 674.

SEC. 4. (a) Section 474(b) of the Social Security Act is amended—

(1) in paragraphs (1), (2)(B), and (4)(B), by striking out “1981 through 1984” and inserting in lieu thereof “1981 through 1985”;

(2) in paragraph (2)(A)—

(A) by striking out “and” at the end of clause (iii),

(B) by striking out the period at the end of clause (iv) and inserting in lieu thereof “; and”, and

(C) by adding after clause (iv) the following new clause:

“(v) with respect to fiscal year 1985, only if the amount appropriated under section 420 for such fiscal year is equal to \$266,000,000.”; and

(3) in paragraph (5)(A)—

(A) by striking out “October 1, 1984” and inserting in lieu thereof “October 1, 1985”, and

(B) by striking out “fiscal year 1984” in clause (ii) and inserting in lieu thereof “each of fiscal years 1984 and 1985”.

(b) Section 474(c) of such Act is amended in paragraphs (1) and (2) by striking out “1981 through 1984” and inserting in lieu thereof “1981 through 1985”.

42 USC 674.

(c)(1) Section 102(a)(1) of the Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272) is amended by striking out “October 1, 1984” and inserting in lieu thereof “October 1, 1985”.

97 Stat. 803.

42 USC 672 Note.

(2) Section 102(c) of such Act is amended by striking out “October 1, 1984” each place it appears and inserting in lieu thereof “October 1, 1985”.

97 Stat. 803.

42 USC 672 Note.

Approved November 8, 1984.

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**LEGISLATIVE HISTORY—H.R. 5386:**

HOUSE REPORT No. 98-1100 (Comm. on Ways and Means).

CONGRESSIONAL RECORD, Vol. 130 (1984):

Oct. 1, considered and passed House.

Oct. 11, considered and passed Senate, amended; House concurred in Senate amendments.





## PAYMENT RATES FOR HOSPICE HOME CARE UNDER MEDICARE

SEPTEMBER 28, 1984.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means,  
submitted the following

### R E P O R T

[To accompany H.R. 5386]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means to whom was referred the bill (H.R. 5386) to amend part A of title XVIII of the Social Security Act with respect to the payment rates for routine home care and other services included in hospice care, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert:

That (a) section 1814(i)(1) of the Social Security Act (42 U.S.C. 1395f(i)(1)) is amended—

(1) by inserting “(A)” after “(i)(1)”, and

(2) by adding at the end the following new subparagraphs:

“(B) Notwithstanding subparagraph (A), the rate of payment per day for routine home care furnished during fiscal year 1985 shall be \$53.17.

“(C) With respect to care and services furnished on or after October 1, 1985, the Secretary shall, not less often than annually, review and make appropriate adjustments to the payment rate for routine home care and the payment rates for other services included in hospice care based on the costs that are reasonable and related to the costs of furnishing such care and services. The Secretary shall report to Congress on October 1 each year on such review and such adjustments and on the adequacy of the rates under this paragraph to ensure participation by an adequate number of hospice programs under this title.”.

(b) The amendments made by this Act shall apply to routine home care and other services included in hospice care furnished on or after October 1, 1984.

## I. INTRODUCTION

### PURPOSE

The Committee bill, H.R. 5386, would increase the hospice reimbursement rate for routine home care days under Title XVIII of the Social Security Act and would require that the Secretary would not less often than annually review, and as appropriate, adjust the hospice reimbursement rates to reflect costs that are reasonable and related to the costs of furnishing such care and services. The Committee believes that increasing the reimbursement rate for home care is necessary in order to adequately reimburse hospice programs for the cost of providing such care.

### BACKGROUND AND NEED FOR LEGISLATION

Section 122 of Public Law 97-248, the Tax Equity and Fiscal Responsibility Act of 1982, provided reimbursement under the medicare program for a new category of medicare providers, hospice programs. P.L. 97-248 required that hospice programs be reimbursed an amount equal to the costs which are reasonable and related to the cost of providing hospice care (or based upon such other test of reasonableness as the Secretary may prescribe). In addition the hospice programs would be subject to a cap (calculated individually but applied in the aggregate), subsequently set in Public Law 98-90, at \$6,500 (indexed annually by the medical care expenditure category of the Consumer Price Index).

In response to this legislation, the Department of Health and Human Services established a prospective payment system for hospice care. Payment rates based on very little data were established for each day a patient was in the hospice program. Daily rates of \$46.25 for routine home care, \$358.67 for continuous home care, \$55.33 for inpatient respite care and \$271.00 for general inpatient care were established.

The hospice benefit became effective November 1, 1983, however, by September 1984 only 119 hospice programs nationwide had been certified and approved as medicare hospice providers. Although it is unclear as to why so many hospice programs are not participating, many have stated that the low prospective payment rates, especially for daily home care which constitutes about 80% of the care provided, as a major reason.

## II. SUMMARY

H.R. 5386 would establish the routine home care payment rate at \$53.17 per day services furnished during the 12 month period beginning October 1, 1984.

In addition, the Secretary would be required to review beginning October 1, 1985, and not less often than annually thereafter, and as appropriate, adjust the payment rate for routine home care and for other services included in hospice care based on the costs that are reasonable and related to the costs of furnishing such care and services. The Secretary would be required to report to the Congress on October 1 of each year, on such review and on the adequacy of

the rates in ensuring participation by an adequate number of hospice programs.

The Committee believes that hospice care is a compassionate and cost effective alternative to traditional care and should be available to medicare beneficiaries. The Committee wishes to express its concern that the Department of Health and Human Services has not established the hospice program high on their agenda of priorities. The Committee is therefore reiterating their request for the General Accounting Office to continue to be closely involved with the monitoring of the implementation of the hospice benefit and to continue to keep the Committees of jurisdiction informed of developments in this area.

The language in this legislation should not be interpreted to mean that the Secretary has no obligation to review the reimbursement rates for other than the daily home care rate until October 1, 1985. The Committee anticipates that the Secretary will review these reimbursement rates as soon as adequate cost report information from the participating hospice programs becomes available. The Committee wishes to express its dissatisfaction with the action taken to date on collecting cost information. The Committee understands that cost report forms have still not been made available to hospice programs nearly a year after the beginning of the hospice program. This is totally unacceptable and the Committee believes that the Secretary should make every effort to make these forms available and to start analyzing cost report information at the earliest opportunity.

### III. BUDGET EFFECTS OF THE BILL

#### 1. COMMITTEE ESTIMATE

In compliance with clause 7(a) of Rule XIII of the Rules of the House of Representatives, the following statement is made: The Committee agrees with the cost estimate prepared by the Congressional Budget Office which is included below. This estimate indicates that there will be additional program expenditures under the Health Insurance Trust Fund of no more than \$1 million in Fiscal Year 1985 and no more than \$3 million in Fiscal Year 1986.

#### 2. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES

With respect to clause 2(1)(3)(B) of Rule XI of the Rules of the House of Representatives, the Committee advises that the required information pertaining to new budget authority or new or increased tax expenditures, to the extent applicable to this bill, is contained in the Congressional Budget Office cost estimate below.

#### 3. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 2(1)(3)(C) of Rule XI of the Rules of the House of Representatives requiring a cost estimate prepared by the Congressional Budget Office, the following report prepared by the Congressional Budget Office is provided.



U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, DC, September 27, 1984.

Hon. DAN ROSTENKOWSKI,  
*Chairman, Committee on Ways and Means,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 5386, a bill to amend Part A of title XVIII of the Social Security Act with respect to the payment rates for routine home care, as ordered reported by the House Committee on Ways and Means on September 26, 1984.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ERIC HANUSHEK  
(For Rudolph G. Penner.)

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 5386.
2. Bill title: A bill to amend Part A of title XVIII of the Social Security Act with respect to the payment rates for routine home care.
3. Bill status: As ordered reported by the House Committee on Ways and Means, September 26, 1984.
4. Bill purpose: This bill would amend the Social Security Act to increase the payment rate of routine home care under the Medicare hospice election benefit.
5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1985	1986	1987	1988	1989
Budget authority.....	(1)	(1)	(1)	.....	.....
Outlays.....	1	3	(1)	.....	.....

<sup>1</sup> Less than \$500,000.

The costs of this bill fall within budget function 550.

*Basis of estimate*

This legislation would increase the daily Medicare reimbursement for routine home care under the hospice election benefit from \$46.25 to \$53.17. The legislation would be effective for hospice care furnished during fiscal year 1985. For care furnished after fiscal year 1985, the Secretary of Health and Human Services would be required to review and appropriately adjust this payment rate. The estimated costs for this legislation are \$1 million in 1985 and \$3 million in 1986. As the hospice benefit will expire in 1987, except for those beneficiaries who are already enrolled in the program, the costs for 1987 would be negligible.

The costs of this legislation were calculated by multiplying the \$6.92 rate increase by the number of beneficiaries by the number of days of routine home care. Unfortunately, as this program has



only been in effect since November 1983, the data on hospice length of stay and on the number of beneficiaries is very limited.

The data from the hospice demonstration projects indicated that the average length of stay in a hospice was between 60 and 70 days. However, the demonstrations did not limit the total number of hospice days of care, as does current law under Medicare. A small number of patients had very long stays. The median length of stay for the demonstrations was only about 35 days.

The data on the number of patients is more difficult to pinpoint. Based on a 1984 telephone survey, the National Hospice Organization concluded that about 6,000 patients could reasonably be expected to use the Medicare Hospice benefit in 1985. This number was much lower than either the original CBO or the administration's estimate of hospice beneficiaries. In fact, current HCFA records indicate that only about 1,280 patients will have elected the hospice benefit by September of 1984.

In calculating the estimated costs of this legislation, we assumed that the average length of stay would be about 35 days. CBO also assumed that although participation was lower during the first year of the program, it could reasonably be expected to increase as the program matured and as more hospices became certified for participation in Medicare. Based on the recent growth in certified hospices, we estimated a participation of about 4,000 patients in 1985 and 10,000 in 1986. Additionally, we assumed that the reimbursement rate for the routine home care benefit would be increased in 1986 to reflect price increases. Therefore, the estimated costs of this legislation would be \$1 million and \$3 million in 1985 and 1986, respectively.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Hinda Ripps Chaikind.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

#### IV. OTHER MATTERS REQUIRED TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

##### 1. VOTE OF THE COMMITTEE

In compliance with clause 2(1)(2)(B) of Rule XI of the Rules of the House of Representatives, the following statement is made: the bill H.R. 5386, as amended, was ordered favorably reported to the House of Representatives by voice vote.

##### 2. OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of Rule XI of the Rules of the House of Representatives, the Committee reports that the need for this legislation has been confirmed by oversight investigations conducted by the Subcommittee on Health.

##### 3. OVERSIGHT BY COMMITTEE ON GOVERNMENT OPERATIONS

In compliance with clause 2(1)(3)(A) of Rule XI of the Rules of the House of Representatives, the committee states that no oversight

findings and recommendations have been submitted to the Committee by the Committee on Government Operations with respect to the subject matter contained in the bill.

#### 4. INFLATION IMPACT

Pursuant to clause 2(l)(4) of Rules XI of the Rules of the House of Representatives, with regard to the inflationary impact of the reported bill. The Committee believes that the bill has no measureable effect on health care prices or consumer prices generally.

#### V. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic, existing law in which no change is proposed is shown in roman):

#### SECTION 1814 OF THE SOCIAL SECURITY ACT

##### CONDITIONS OF AND LIMITATIONS ON PAYMENT FOR SERVICES

##### Requirement of Requests and Certifications

SEC. 1814. (a) \* \* \*

\* \* \* \* \*

##### Payment for Hospice Care

(i)(1)(A) Subject to the limitation under paragraph (2) and the provisions of section 1813(a)(4), the amount paid to a hospice program with respect to hospice care for which payment may be made under this part shall be an amount equal to the costs which are reasonable and related to the cost of providing hospice care or which are based on such other tests of reasonableness as the Secretary may prescribe in regulations (including those authorized under section 1861(v)(1)(A)) except that no payment may be made for bereavement counseling and no reimbursement may be made for other counseling services (including nutritional and dietary counseling) as separate services.

*(B) Notwithstanding subparagraph (A), the rate of payment per day for routine home care furnished during fiscal year 1985 shall be \$53.17.*

*(C) With respect to care and services furnished on or after October 1, 1985, the Secretary shall, not less often than annually, review and make appropriate adjustments to the payment rate for routine home care and the payment rates for other services included in hospice care based on the costs that are reasonable and related to the costs of furnishing such care and services. The Secretary shall report to Congress on October 1 each year on such review and such adjustments and on the adequacy of the rates under this paragraph to ensure participation by an adequate number of hospice programs under this title.*

(2)(A) The amount of payment made under this part for hospice care provided by (or under arrangements made by) a hospice program for an accounting year may not exceed the "cap amount" for

the year (computed under subparagraph (B)) multiplied by the number of medicare beneficiaries in the hospice program in that year (determined under subparagraph (C)).

(B) For purposes of subparagraph (A), the "cap amount" for a year is \$6,500, increased or decreased, for accounting years that end after October 1, 1984, by the same percentage as the percentage increase or decrease, respectively, in the medical care expenditure category of the Consumer Price Index for All Urban Consumers (United States city average), published by the Bureau of Labor Statistics, from March 1984 to the fifth month of the accounting year.

(C) For purposes of subparagraph (A), the "number of medicare beneficiaries" in a hospice program in an accounting year is equal to the number of individuals who have made an election under subsection (d) with respect to the hospice program and have been provided hospice care by (or under arrangements made by) the hospice program under this part in the accounting year, such number reduced to reflect the proportion of hospice care that each such individual was provided in a previous or subsequent accounting year or under a plan of care established by another hospice program.

\* \* \* \* \*







Finder's Aid  
P.L. 98-620 (98 Stat. 3335) Approved November 8, 1984  
"Trademark Clarification Act of 1984"

<u>Subject</u>	<u>S.S. Act Section</u>	<u>P.L. Section</u>	<u>98 Stat.</u>	<u>H. Rep. 98-1062</u>
Grants to States for Unemployment Compensation - Administration - Judicial Preference	304(e) Repealed	402(39)	3360	--



Public Law 98-620  
98th Congress

An Act

To amend title 28, United States Code, with respect to the places where court shall be held in certain judicial districts, and for other purposes.

Nov. 8, 1984  
[H.R. 6163]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

TITLE I

Trademark  
Clarification Act  
of 1984.

SHORT TITLE

SEC. 101. This title may be cited as the “Trademark Clarification Act of 1984”.

15 USC 1051  
note.

AMENDMENT TO THE TRADEMARK ACT

SEC. 102. Section 14(c) of the Trademark Act of 1946, commonly known as the Lanham Trademark Act (15 U.S.C. 1064(c)) is amended by adding before the semicolon at the end of such section a period and the following: “A registered mark shall not be deemed to be the common descriptive name of goods or services solely because such mark is also used as a name of or to identify a unique product or service. The primary significance of the registered mark to the relevant public rather than purchaser motivation shall be the test for determining whether the registered mark has become the common descriptive name of goods or services in connection with which it has been used”.

DEFINITIONS

SEC. 103. Section 45 of such Act (15 U.S.C. 1127) is amended as follows:

(1) Strike out “The term ‘trade-mark’ includes any word, name, symbol, or device or any combination thereof adopted and used by a manufacturer or merchant to identify his goods and distinguish them from those manufactured or sold by others.” and insert in lieu thereof the following: “The term ‘trademark’ includes any word, name, symbol, or device or any combination thereof adopted and used by a manufacturer or merchant to identify and distinguish his goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.”.

(2) Strike out “The term ‘service mark’ means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others.” and insert in lieu thereof the following: “The term ‘service mark’ means a mark used in the sale or advertising of services to identify and distinguish the services of one person, including a unique service, from the services of others and to indicate the source of the services, even if that source is unknown.”.

striking out “with the greatest possible expedition” and all that follows through the end of the sentence and inserting in lieu thereof “expeditiously”.

(31) Section 10(i) of the National Labor Relations Act (29 U.S.C. 160(i)) is repealed.

(32) Section 11(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 660(a)) is amended by striking out the last sentence.

(33) Section 4003(e)(4) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1303(e)(4)) is repealed.

(34) Section 106(a)(1) of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 816(a)(1)) is amended by striking out the last sentence.

2 USC 687.

(35) Section 1016 of the Impoundment Control Act of 1974 (31 U.S.C. 1406) is amended by striking out the second sentence.

(36) Section 2022 of title 38, United States Code, is amended by striking out “The court shall order speedy hearing in any such case and shall advance it on the calendar.”.

(37) Section 3628 of title 39, United States Code, is amended by striking out the fourth sentence.

(38) Section 1450(i)(4) of the Public Health Service Act (42 U.S.C. 300j-9(i)(4)) is amended by striking out the last sentence.

(39) Section 304(e) of the Social Security Act (42 U.S.C. 504(e)) is repealed.

(40) Section 814 of the Act of April 11, 1968 (42 U.S.C. 3614), is repealed.

(41) The matter under the subheading “Exploration of National Petroleum Reserve in Alaska” under the headings “ENERGY AND MINERALS” and “GEOLOGICAL SURVEY” in title I of the Act of December 12, 1980 (94 Stat. 2964; 42 U.S.C. 6508), is amended in the third paragraph by striking out the last sentence.

(42) Section 214(b) of the Emergency Energy Conservation Act of 1979 (42 U.S.C. 8514(b)) is repealed.

(43) Section 2 of the Act of February 25, 1885 (43 U.S.C. 1062), is amended by striking out “; and any suit brought under the provisions of this section shall have precedence for hearing and trial over other cases on the civil docket of the court, and shall be tried and determined at the earliest practicable day”.

(44) Section 23(d) of the Outer Continental Shelf Lands Act (43 U.S.C. 1349(d)) is repealed.

(45) Section 511(c) of the Public Utilities Regulatory Policies Act of 1978 (43 U.S.C. 2011(c)) is amended by striking out “Any such proceeding shall be assigned for hearing at the earliest possible date and shall be expedited by such court.”.

(46) Section 203(d) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652(d)) is amended by striking out the fourth sentence.

(47) Section 5(f) of the Railroad Unemployment Insurance Act (45 U.S.C. 355(f)) is amended by striking out “, and shall be given precedence in the adjudication thereof over all other civil cases not otherwise entitled by law to precedence”.

(48) Section 305(d)(2) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 745(d)(2)) is amended—

(A) in the first sentence by striking out “Within 180 days after” and inserting in lieu thereof “After”; and



include the requirements established in paragraph 202(c)(4) and section 203 of this title.”

(14) by adding at the end thereof the following new section:

Prohibition.  
35 USC 212.

**“§ 212. Disposition of rights in educational awards**

“No scholarship, fellowship, training grant, or other funding agreement made by a Federal agency primarily to an awardee for educational purposes will contain any provision giving the Federal agency any rights to inventions made by the awardee.”; and

(15) by adding at the end of the table of sections for the chapter the following new item:

“212. Disposition of rights in educational awards.”.

Approved November 8, 1984.

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**LEGISLATIVE HISTORY—H.R. 6163:**

HOUSE REPORT No. 98-1062 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 130 (1984):

Sept. 24, considered and passed House.

Oct. 3, considered and passed Senate, amended.

Oct. 9, House concurred in Senate amendments.



## FEDERAL DISTRICT COURT ORGANIZATION ACT OF 1984

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SEPTEMBER 24, 1984.—Committed to the Committee on the Whole House on the State of the Union and ordered to be printed

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Mr. KASTENMEIER, from the Committee on the Judiciary,  
submitted the following

### REPORT

[To accompany H.R. 6163]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 6163) to amend title 28, United States Code, with respect to the places where court shall be held in certain judicial districts, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

#### PURPOSE OF THE LEGISLATION

The purpose of the proposed legislation is to realign the boundaries of divisions within three judicial districts, to statutorily create an additional place of holding court in four judicial districts, and to change the place of holding court in one judicial district. In short, the legislation modifies the organization and placement of Federal district courts so as to better reflect the changing demographic patterns and varying societal needs in six states.

#### BACKGROUND

Each Congress, several bills are introduced to change the geographic organization of the Federal courts. It generally has been the policy of the subcommittee to refrain from authorizing new places of holding court or making changes in the organizational or geographical configuration of individual judicial districts unless such changes have been endorsed by the judicial branch of government—through the Judicial Conference of the United States—and

No material relating to the Social Security Act in this report.









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